REPORT OF THE MATTERS TRANSACTED BY THE MINISTER OF LABOUR DURING 1985 UNDER THE PROVISIONS OF THE:

Labour Relations Act

Public Service (Collective Bargaining) Act

Fishing Industry (Collective Bargaining) Act

Newfoundland Teacher (Collective Bargaining) Act

Report of the Labour Standards Board for the year 1985

Report of the Newfoundland Labour Relations Board for the year 1985

Report of the matters transacted by the Minister of Labour during 1985 under the provisions of the:

Labour Relations Act

Public Service (Collective Bargaining) Act

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Newfoundland Teacher (Collective Bargaining) Act

Report of the Labour Standards Board for the year 1985

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Analysis of the requests for conciliation referred to the Minister during 1985

1. Total requests referred to the Minister during 1985 85

1. Total requests referred to the Minister during 1985		85
Requests rejected by the Minister		0
Total requests referred to conciliation officers		85
2. Disputes referred to conciliation officers under:		
The Labour Relations Act	76	
The Public Service (Collective Bargaining) Act	8	
The Fishing Industry (Collective Bargaining) Act	0	
The Newfoundland Teacher (Collective Bargaining) Act	1	
TOTAL:	85	85

Total number of persons included in bargaining units involved in labour disputes settled with the assistance of conciliation officers.	32,171

DISPOSITION OF DISPUTES

1.	Disputes in progress as of 31 December, 1984		32
2.	Disputes referred to conciliation officers during 1985		85
3.	Disputes resolved under:		
	The Labour Relations Act	72	
	The Public Service (Collective Bargaining) Act	9	
	The Fishing Industry (Collective Bargaining) Act	1	
	The Newfoundland Teacher (Collective Bargaining) Act	2	
4.	Disputes considered to have lapsed under:		
	The Labour Relations Act	6	
	The Public Service (Collective Bargaining) Act	1	
	The Fishing Industry (Collective Bargaining) Act	0	
	The Newfoundland Teacher (Collective Bargaining) Act	0	
5.	Disputes being dealt with by conciliation officers as of 31 December, 1985, under:		
	The Labour Relations Act	17	
	The Public Service (Collective Bargaining) Act	9	
	The Fishing Industry (Collective Bargaining) Act	0	
	The Newfoundland Teacher (Collective Bargaining) Act	0	
	TOTAL:	117	117

Disputes referred to a conciliation board after being dealt with by a conciliation officer under:

The Labour Relations Act	0
The Public Service (Collective Bargaining) Act	1
The Fishing Industry (Collective Bargaining) Act	0
The Newfoundland Teacher (Collective Bargaining) Act	2

Report of the matters transacted by the Minister of Labour during 1985 under the provisions of The Labour Relations Act

This report is presented in accordance with Section 144 of the Act.

Conciliation

Pursuant to the provisions of The Labour Relations Act, the Minister received requests for conciliation services during 1985, seeking assistance toward the settlement of labour disputes involving the conclusions of collective agreements between the following parties:-

1. Retail, Wholesale & Department Store Union, Local 597 and Donovans Wholesale Ltd., Donovan's Industrial Park, Mount Pearl.

2. Canadian Union of Public Employees, Local 2386 and Town of Gander.

3. Newfoundland Association of Public Employees and Eastern Service Company, (Memorial University Cleaning Contract) St. John's.

4. Newfoundland Association of Public Employees and Burin Peninsula Interfaith Children's Home.

5. Canadian Union of Public Employees, Local 2172 and Avalon Consolidated School Board, St. John's.

6. Canadian Union of Public Employees, Local 768 and City of Corner Brook.

7. Retail, Wholesale and Department Store Union, Local 597 and Philip Parsons Ltd., Donovan's Industrial Park, Mount Pearl.

8. International Association of Fire Fighters, Local 1222 and City of Corner Brook.

9. Canadian Union of Public Employees, Local 1615 and Memorial University of Newfoundland, St. John's.

10. Transport and Allied Workers Union, Local 855 and Terra Nova Motors Limited, (Utility), St. John's.

11. Transport and Allied Workers Union, Local 855 and Moffatt Brothers Moving and Storage, St. John's (A Division of Canadian Pacific Express and Transport Ltd.).

12. Canadian Union of Public Employees, Local 1567 and Town of LaScie.

13. Canadian Paperworkers Union, Local 158 and Abitibi Price Inc., Grand Falls.

14. United Brotherhood of Carpenters and Joiners of America, Local 2564 and Walken Enterprises Ltd., St. John's.

15. Newfoundland Association of Public Employees and Bonavista/Trinity/Placentia Integrated School Board, Clarenville.

16. International Union of Operating Engineers, Local 904 and Len Vardy Transport Limited, St. John's.

17. Transport and Allied Workers Union, Local 855 and Royal Garage Limited, St. John's.

18. Retail, Wholesale and Department Store Union, Local 597 and Sunshine Dairy Limited, St. John's.

19. Newfoundland Association of Public Employees and Nova Services Limited, St. John's (Memorial University Catering Contract).

20. Newfoundland Association of Public Employees and Town of Stephenville.

21. United Steelworkers of America, Local 7144 and Newfoundland Minerals Limited, Manuels.

22. Newfoundland Association of Public Employees and Placentia/St. Mary's Roman Catholic School Board, Placentia.

23. Newfoundland Association of Public Employees, Local 7004 and Labatt Brewing Company Limited, St. John's.

24. International Association of Machinists and Aerospace Workers, Lodge 544 and Beothuck Ford, Grand Falls.

25. Bakery, Confectionery and Tobacco Workers Union, Local 381 and Mammy's Bakery Limited, St. John's.

26. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351 and Newfoundland Association of Public Employees, Local 7006 and Breweries Industrial Relations Association representing Carling O'Keefe Brewery Limited and Molson Newfoundland Brewery.

27. Retail, Wholesale and Department Store Union, Local 597 and Holiday Inn, Corner Brook (Atlific Nfld. Ltd.).

28. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 354 (Office Unit) and Carling O'Keefe Breweries of Canada Limited, St. John's.

29. Newfoundland Association of Public Employees and Roman Catholic School Board, Ferryland.

30. Retail, Wholesale and Department Store Union, Local 597 and Cara Operations Limited, Gander.

31. International Association of Machinists and Aerospace Workers, Lodge 544 and Hickman Motors Limited, Clarenville.

32. Canadian Union of Public Employees, Local 1349 _and_ Town of Grand Falls.

33. Canadian Union of Public Employees, Local 1349 _and_ Town of Windsor.

34. International Brotherhood of Electrical Workers, Local 2351 _and_ Churchill Falls (Labrador) Corporation, St. John's and Churchill Falls.

35. United Food and Commercial Workers, The Fishermen's Union, Local 1252 _and_ P. Janes & Sons Limited, Hant's Harbour, Jackson's Arm and Salvage.

36. Hospitality and Service Workers' Union, Local 351 _and_ East Coast Bottle Pickers Limited, St. John's.

37. International Association of Machinists and Aerospace Workers, Local 927 _and_ Modern Building Cleaning (Nfld.) Ltd., Gander.

38. United Brotherhood of Carpenters and Joiners of America, Local 2564 _and_ Neldo Marine Development Co., Argentia.

39. Newfoundland Association of Public Employees _and_ St. John's Metropolitan Area Board.

40. International Association of Bridge, Structural and Ornamental Iron Workers, Local 764 _and_ Newfoundland Construction Labour Relations Association.

41. Transport and Allied Workers Union, Local 855 _and_ Atlantic Concrete, St. John's.

42. International Brotherhood of Painters and Allied Trades _and_ E.C. Boone Limited, St. John's.

43. United Steelworkers of America, Locals 7428 and 7711 _and_ Electrical Reduction Company of Canada Limited, Long Harbour.

44. Retail, Wholesale and Department Store Union, Local 597 and City Consumers Co-operative, St. John's

45. Canadian Union of Public Employees, Local 2449 and St. John's School Tax Authority.

46. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Port Enterprises Limited, Southern Harbour.

47. United Brotherhood of Carpenters and Joiners of America, Local 579 and Newfoundland Construction Labour Relations Association.

48. Retail, Wholesale and Department Store Union, Local 597 and Dominion Stores Limited, Province-Wide Locations.

49. United Brotherhood of Carpenters and Joiners of America, Local 1009 and Newfoundland Zinc Mines Limited, Daniel's Harbour (Office Staff).

50. Newfoundland Association of Public Employees, Local 1802 and Deer Lake Town Council.

51. Canadian Union of Public Employees, Local 706 and City of Corner Brook.

52. Industrial Union of Marine & General Workers of Canada, Local 20 and Marystown Shipyard Limited.

53. Bakery, Confectionery and Tobacco Workers International Union, Local 381 and Purity Factories Limited, St. John's.

54. International Association of Firefighters, Local 1852 and Town of Stephenville.

55. Canadian Union of Public Employees, Local 1349 and Town of Norris Arm.

56. Transport and Allied Workers Union, Local 855 and Harvey and Company Limited, St. John's.

57. Labourers' International Union, Local 1208 and Newfoundland Association of Public Employees; St. John's, Clarenville, Grand Falls, and Corner Brook.

58. Retail, Wholesale and Department Store Union, Local 597 and Royal Grocery Limited, St. John's.

59. United Brotherhood of Carpenters and Joiners of America, Millwright Local 1009 and Robco Marine Limited, Harbour Drive, St. John's.

60. Retail, Wholesale and Department Store Union, Local 597 and Blue Buoy Foods Limited, St. John's.

61. Newfoundland Association of Public Employees and Roman Catholic School Board for Conception Bay North, Carbonear.

62. United Steelworkers of America, Local 6480 and People's Department Store Limited, Wabush.

63. Newfoundland Association of Public Employees and Terrington Consumers Co-operative Society Limited, Goose Bay.

64. Retail, Wholesale and Department Store Union, Local 597 and Gainers Inc., St. John's.

65. Retail, Wholesale and Department Store Union, Local 597 and J.T. Swyers Limited, Bonavista.

66. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and Newfoundland Construction Labour Relations Association.

67. Newfoundland Association of Public Employees and Town of Stephenville Crossing.

68. Canadian Union of Public Employees, Local 1289 and the St. John's Municipal Council.

69. Fishermen's Union Local 1252, United Food and Commercial Workers and Grand Falls Co-operative Society Limited, Grand Falls.

70. International Association of Machinists and Aerospace Workers, Local 927 and CP Personnel, Gander.

71. Newfoundland Association of Public Employees and Labrador East Integrated School Board, Happy Valley-Goose Bay.

72. International Association of Machinists and Aerospace Workers, Local Lodge 544 and Gander Auto Dealers (The Hickman Motors Limited/Jim Penney Limited).

73. Millwright Local 1009, United Brotherhood of Carpenters and Joiners of America and Newfoundland Zinc Mines, Daniel's Harbour (Operations).

74. Newfoundland Association of Public Employees and Town of Portugal Cove.

75. Newfoundland Association of Public Employees and Bay St. George Roman Catholic School Board.

76. United Brotherhood of Carpenters and Joiners of America, Local Union 2564 and Saunders, Howell Manufacturing Limited, Carbonear.

Disputes referred to Conciliation Officers under The Labour Relations Act

1.	Disputes in progress as of 31 December, 1984		19
2.	Disputes referred to conciliation officers during 1985		76
3.	Disputes resolved at conciliation officer level	58	
4.	Disputes referred to and resolved by conciliation boards after being dealt with by conciliation officers	0	
5.	Disputes referred to and resolved by binding mediation	1	
6.	Disputes resolved with the assistance of conciliation officers after strike action by union or lockout by employer	13	
7.	Disputes considered to have lapsed	6	
8.	Disputes being dealt with by conciliation officers as of 31 December, 1985	17	
	TOTAL:	95	95

Appointed under The Labour Relations Act

Conciliation Board

NIL

Requests for the Appointment of Arbitrators Under The Labour Relations Act

1. Sheet Metal Workers International Association, Local 512 and Marshall Industries Limited, Labrador City.

   Disposition: Resolved without Arbitration.

2. International Union of Operating Engineers, Local 904 and Pinsent Construction Company Limited, Stephenville.

   Disposition: Resolved without Arbitration

3. United Brotherhood of Carpenters and Joiners of America, Local 579 and Sherwood Construction Limited (Bonavista Hospital Project).

   Disposition: Professor Howard Dyer appointed as sole arbitrator February 25, 1985.

4. Retail, Wholesale and Department Store Union, Local 597 and Blue Buoy Foods Limited, St. John's.

   Disposition: Resolved without Arbitration.

5. International Union of Operating Engineers, Local 904 and Pinsent Concrete Limited, Stephenville.

   Disposition: Pending

6. International Union of Bricklayers and Allied Craftsmen, Local No. 1 and Jack Green Limited (Burin Hospital Project).

   Disposition: Resolved without Arbitration.

7. International Union of Operating Engineers, Local 904 and N. and L. Construction Limited, Stephenville.

   Disposition: Mr. Denis Roberts appointed as sole arbitrator 12 August, 1985.

8. International Union of Operating Engineers, Local 904 and ROBB Construction, Nova Scotia.

   Disposition: Resolved without Arbitration.

9. International Brotherhood of Painters and Allied Trades, Local 1678 and Standard Manufacturing Company Limited, St. John's.

   Disposition: Resolved without Arbitration.

10. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 898 and Atlantic Theatres (Topsail Cinemas, St. John's)

    Disposition: Parties subsequently agreed on an arbitrator and the Department's services were no longer required.

11. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and P. Janes and Sons Limited, Hant's Harbour.

Disposition: Resolved without Arbitration.

12. International Union of Operating Engineers, Local 904 and Len Vardy Transport Limited, St. John's.

Disposition: Pending.

13. Transport and Allied Workers Union, Local 855 and Brinks Canada Limited, St. John's.

Disposition: Resolved without Arbitration.

14. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 740 and Bishop's Plumbing and Heating Limited, St. John's.

Disposition: Pending

15. United Brotherhood of Carpenters and Joiners of America, Local 579 and N. and L. Construction Limited, Stephenville.

Disposition: Mr. Dennis Ryan appointed as sole arbitrator on 27 August, 1985.

16. Canadian Brotherhood of Railway, Transport and General Workers, Local 550 and CN Hotels Inc. (Hotel Newfoundland, St. John's).

    Disposition: Parties agreed on an arbitrator and the Department's services were no longer required.

17. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Island Seafoods Limited, Herring Neck.

    Disposition: Resolved without Arbitration.

Report of the matters transacted by the Minister of Labour during 1985 under the provisions of The Public Service (Collective Bargaining) Act, 1973.

This report is presented in accordance with Section 43 of that Act.

Conciliation

Pursuant to the provisions of The Public Service (Collective Bargaining) Act, the Minister received requests for conciliation services during 1985 seeking assistance toward the settlement of labour disputes involving the renewal of collective agreements between the following parties:-

1. Newfoundland Association of Public Employees representing Vocational Instructors and Department of Career Development and Advanced Studies, College of Trades and Technology and Bay St. George Community College; represented by Treasury Board.

2. Professional Association of Interns and Residents of Newfoundland and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and the Newfoundland Hospital Association.

3. Newfoundland Association of Public Employees and Avalon Community Accommodations Board, St. John's.

4. Newfoundland Association of Public Employees and Newfoundland Liquor Corporation.

5. Newfoundland Association of Public Employees and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board (Air Services Division, Department of Transportation).

6. International Brotherhood of Electrical Workers, Local 1615 (Operations Division) and Newfouundland and Labrador Hydro Corporation.

7. Canadian Union of Public Employees, Local 2172 and The John Howard Society of Newfoundland, St. John's.

8. Association of Allied Health Professionals and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and the Newfoundland Hospital Association.

Disputes referred to Conciliation Officers under The Public Service (Collective Bargaining) Act

1.	Disputes in progress as of December 31, 1984		12
2.	Disputes referred to conciliation officers during 1985		8
3.	Disputes resolved at conciliation officer level	9	
4.	Disputes referred to conciliation board after being dealt with by conciliation officers	1	
5.	Disputes resolved with the assistance of conciliation officers after strike action by union or lockout by employer	0	
6.	Disputes considered to have lapsed	1	
7.	Disputes being dealt with by conciliation officers as of 31 December, 1985	9	
	TOTAL	20	20

Appointed under The Public Service (Collective Bargaining) Act

Conciliation Boards

1. Professional Association of Interns and Residents of Newfoundland and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and the Newfoundland Hospital Association.

Chairman	Gordon G. Easton, Q.C.
Employer Representative	Michael F. Harrington, LL.B
Union Representative	Dr. Robert J. Howard, M.D.

Requests for the Appointment of Arbitrators Under The Public Service (Collective Bargaining) Act

1. Newfoundland Association of Public Employees representing the Maintenance and Operational Services Bargaining Unit and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board.

   Disposition: The parties reached agreement on the selection of a chairperson to the arbitration board and the Department's services were no longer required.

Report of the matters transacted by the Minister of Labour during 1985 under the provisions of The Fishing Industry (Collective Bargaining) Act, 1971

This report is presented in accordance with Section 35 of that Act.

Conciliation

Pursuant to the provisions of The Fishing Industry (Collective Bargaining) Act, the Minister did not receive a request for conciliation services during 1985.

Disputes referred to Conciliation Officers under The Fishing Industry (Collective Bargaining) Act

1. Disputes in progress as of 31 December, 1984		1
2. Disputes referred to conciliation officers during 1985		0
3. Disputes resolved at conciliation officer level	1	
4. Disputes referred to conciliation boards after being dealt with by conciliation officers	0	
5. Disputes considered to have lapsed	0	
6. Disputes being dealt with by conciliation officers as of 31 December, 1985	0	
TOTAL	1	1

Requests for the Appointment of Arbitrators Under The Fishing Industry (Collective Bargaining) Act

1. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Cape Pine Fisheries Limited, Witless Bay.

   Disposition: Dr. Arthur Sullivan was appointed as sole arbitrator on 12 July, 1985.

2. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Petty Harbour Seafoods Limited, Petty Harbour.

   Disposition: Resolved without Arbitration.

3. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Aqua Fisheries Limited, Aquaforte.

   Disposition: Resolved without Arbitration

4. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Bay Bulls Sea Products Limited, Bay Bulls.

   Disposition: Dr. Arthur Sullivan appointed as sole arbitrator on 12 July, 1985.

5. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Atlantic Fisheries Limited, South Dildo.

   Disposition: Pending

6. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and National Sea Products Limited, LaScie.

   Disposition: Resolved without Arbitration.

7. United Food and Commercial Workers, The Fishermen's Union, Local 1252 and Cape Pine Fisheries Limited, Witless Bay.

   Disposition: Pending.

Appointed Under The Fishing Industry (Collective Bargaining) Act

Conciliation Boards

Nil

Report of the matters transacted by the Minister of Labour during 1985 under the provisions of The Newfoundland Teacher (Collective Bargaining) Act, 1973

This report is presented in accordance with Section 35 of that Act.

Conciliation

Pursuant to the provisions of The Newfoundland Teacher (Collective Bargaining) Act, the Minister received the following request for conciliation services during 1985 seeking assistance toward the settlement of a labour dispute involving the following parties:-

1. Newfoundland Teachers' Association representing teachers of the Labrador West Integrated School Board and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and the Newfoundland and Labrador School Trustees Association.

Disputes referred to Conciliation Officers under The Newfoundland Teacher (Collective Bargaining) Act

1.	Disputes in progress as of 31 December, 1984		1
2.	Disputes referred to conciliation officers during 1985		1
3.	Disputes resolved at conciliation officer level	0	
4.	Disputes referred to conciliation board after being dealt with by conciliation officers	2	
5.	Disputes being dealt with by conciliation officers as of 31 December, 1985	0	
	TOTAL	2	2

Requests for the Appointment of Arbitrators Under The Newfoundland Teacher (Collective Bargaining) Act

Nil

Appointed Under The Newfoundland Teacher (Collective Bargaining) Act

Conciliation Boards

1. Newfoundland Teachers' Association and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and the Newfoundland and Labrador School Trustees Association.

Chairman	John F. Roil, LL.B, Q.C.
Employer Representative	Michael F. Harrington, LL.B.
Union Representative	V. Randell J. Earle, LL.B.

2. Newfoundland Teachers' Association representing teachers of the Labrador West Integrated School Board and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and Newfoundland and Labrador School Trustees Association.

Chairman	John F. Roil, LL.B., Q.C.
Employer Representative	Michael F. Harrington, LL.B.
Union Representative	V. Randell J. Earle, LL.B.

REPORT OF THE PROCEEDINGS OF THE LABOUR STANDARDS BOARD

COVERING THE CALENDAR YEAR 1985

The Labour Standards Board established under the authority of The Labour Standards Act consists of three members, one who is representative of the interests of employers, one representative of the interests and employees and one designated as Chairman, who shall be independent.

The function of the Board is to advise Government on Labour Standards matters generally and in particular minimum wage.

During the year 1984, and following persons comprised the membership of the Labour Standards Board:-

Donald I. Dooley - Chairman
Howard Crane - Representative of Employers
Reginald Anstey - Representative of Employees

The Secretary to the Board was Mr. Robert Forward until February, 1985; Mr. Steve McCarthy from March to August, 1985; and Mr. David Kerr from September, 1985 to date.

In the calendar year 1985, the Board met on six occasions, four of these meetings were taken up with routine matters of the Board and reviewing the Labour Standards Regulations 1985, in which some of the Board's 1984 Recommendations were incorporated.

Two of the Board's meetings were taken up with reviewing the Employer Survey Questionnaire which it intends to circulate to all employers in the Province in conjunction with its 1986 review and setting the schedule of Public Hearings in 1986.

Donald Dooley
Donald I. Dooley
Chairman

Report of The Labour Relations Board from 1 January, 1985 to 31 December, 1985

The Labour Relations Board was established under the provisions of The Labour Relations Act, 1977. The Board has the responsibility for certain provisions of (1) The Labour Relations Act, 1977, (2) The Fishing Industry (Collective Bargaining) Act, 1971, (3) The Public Service (Collective Bargaining) Act, 1973, (4) The Newfoundland Teacher (Collective Bargaining) Act, 1973, (5) The Occupational Health and Safety Act and (6) The Interns and Residents Collective Bargaining Act.

Under The Labour Relations Act, the Board has the responsibility for the administration of the provisions which concern (1) the certification of unions as the bargaining agent for the appropriate units of employees so that such agents may bargain collectively with the employers of the affected employees; (2) the issuing of orders of revocation of certification upon application by an interested party or parties in cases where certified unions cease to maintain a majority of the members in the appropriate units for which they were certified; (3) the termination of bargaining rights of unions who have been recognized voluntarily by the employer or employers in question who are party to collective agreements but who no longer represent a majority of the employees in the particular bargaining unit; (4) the writing into collective agreements of the procedures for the final settlement of disputes concerning the interpretation of classes of collective agreements or the violation of such clauses; (5) the investigation of complaints referred to it by the Minister of Labour that a party has failed to bargain collectively and make every reasonable effort to conclude a collective agreement; (6) the giving of consent to parties to a collective agreement that they may terminate an agreement within a period less than one year from its commencement; (7) the giving of consent to employers to alter rates of wages, or any other term or condition of employment of employees covered by an application for certification which is pending before the Board; (8) the issuance of orders declaring an undertaking for the construction of works for the development of a natural resource or the establishment of a primary industry to be a special project; (9) the accreditation of an employer's organization as the bargaining agent for employers in the appropriate sector of the construction industry so that such agents may bargain collectively with the bargaining agent or agents of their employees; (10) the amending and varying of orders, decisions and certificates which have been issued by the Board; and (11) the settling of terms and conditions for the first collective agreement.

The Board also has the responsibility for administering provisions similar to those mentioned above, under The Fishing Industry (Collective Bargaining) Act, 1971; and The Newfoundland Teachers (Collective Bargaining) Act, 1973; and The Public Service (Collective Bargaining) Act, 1973; and The Occupational Health and Safety Act; and The Interns and Residents Collective Bargaining Act. Under the Public Service (Collective Bargaining) Act, the Board is also responsible for the issuing of orders declaring certain employees within a bargaining unit or bargaining units to be essential employees for the health, safety or security of the public.

The Newfoundland Labour Relations Board has authority to determine the proper time for making application for certification under certain conditions; to determine the appropriateness of a unit of employees for collective bargaining; to conduct representation votes among employees to determine whether bargaining agents have the support of a majority of employees affected; to reject as bargaining agents unions which are dominated or influenced improperly by employers; to determine who is a member in good standing of a union and to determine who is an employee or an employer within the meaning of the various Acts.

In addition, the Board has made rules prescribing the procedures to be followed in respect of the administrative functions of the Board. These Rules of Procedure include for example, provisions for determining a member in good standing of a trade union or association; a quorum of the Board; and the powers and duties of the Chief Executive Officer and the Secretary of the Board.

The Board consists of five regular members; two representatives of employers; two representatives of employees and an independent chairman. The personnel who served as regular members on the Board during 1985 were: W.A. Alcock and F.W. Russell, representing employers; G. Gillingham and J. Walsh, representing employees. Gordon G. Easton, Q.C., served as Chairman of the Board during 1985.

The Board is also comprised of a Vice-Chairman and four alternate members, two representatives of employers and two representatives of employees, who serve on the Board in the absence of regular members. During the year, under review, Charles W. White, Q.C., served as Vice-Chairman; A.E. Fagan, G. MacDonald, E. Anstey and A. Carter served as alternate representatives for employers and employees respectively.

The administrative duties and functions of the Board are supervised by the Chief Executive Officer with the aid of the Secretary. During 1985, J.M. Noel was the Chief Executive Officer and W. Fowler served as Secretary.

The full-time staff of the Board consists of four persons which include the Chief Executive Officer and the Secretary, an Investigating Officer and Clerk-Stenographer.

Staff members of the Department of Labour are seconded on a temporary basis to act as Investigating Officers and Returning Officers for the Board when required.

During the year, the Board held forty-five (45) days of meetings. Schedules detailing the activities of the Board are attached.

DATED at St. John's this 12th day of February, 1986, A.D.

Respectfully submitted,
Labour Relations Board.

GORDON G. EASTON, Q.C.
CHAIRMAN.

Schedule "A"

The Labour Relations Act

Statement of Proceedings Before The Board during the year 1985

Applications for Certification

1.	Number of Applications pending at 1 January, 1985	16	
2.	Number of Applications filed during the year	64	
3.	Total Applications for certification		80
4.	Number of Applications granted	45	
5.	Number of Applications rejected	10	
6.	Number of Applications withdrawn	10	
7.	Number of Applications lapsed	2	
8.	Total Applications dealt with by the Board		67
9.	Number of Applications pending 31 December, 1985	13	

Applications for Revocation of Certification

1.	Number of Applications pending at 1 January, 1985	3	
2.	Number of Applications filed during the year	8	
3.	Total Applications for revocation of certification		11
4.	Number of Applications granted	3	
5.	Number of Applications rejected	3	
6.	Number of Applications withdrawn	2	
7.	Number of Applications lapsed	0	
8.	Total Applications dealt with by the Board		8
9.	Number of Applications pending at 31 December, 1985	3	

Miscellaneous Applications

1.	Applications pending at 1 January, 1985	24	
2.	Applications received under Section 18 - Reconsideration of Decision	8	
3.	Applications received requesting change name of trade union on certification order	1	
4.	Applications received requesting change name of employer or certification order	0	
5.	Applications received under Section 85 - Matters referred to Board by Arbitrator	1	
6.	Applications received under Section 89 - Transfer of Ownership	11	
7.	Applications received under Section 118 - Unfair Labour Practices	29	
8.	Applications received under Section 126 - Complaint against a bargaining agent for failure to act in good faith in handling of a grievance	11	
9.	Applications received under Section 69 - Determination of Special Project	0	
10.	Total Miscellaneous Applications		85
11.	Total Miscellaneous Applications dealt with by the Board		49
12.	Total Miscellaneous Applications pending at 31 December, 1985		36
	Number of Representation Votes conducted in 1985	11	
	Approximate number of employees affected by certification orders issued in 1985		1273

NOTE: Reasons for decision issued in 1985, with respect to Board decisions issued in 1984:

Tri-City Construction Ltd./Sherwood Construction Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 579. Appendix 1

Schedule "B"

Labour Relations Act

Statement of Proceedings before the Board during 1985

Applications for Certification - Granted

1. Sheet Metal Workers International Association, Local 512 and J.C. Pratt (1974) Limited, St. John's.

Bargaining Unit

A unit of employees of J.C. Pratt (1974) Limited, St. John's comprising all employees of Division "B", Construction Specialities save and except Manager, Sales Staff, Office Staff, Non-working Foremen and those above the rank of Non-working Foremen.

A representation vote was held in this case. There are 20 employees in the bargaining unit.

2. International Association of Machinists and Aerospace Workers, Lodge 927 and Modern Building Cleaning (Nfld.) Limited.

Bargaining Unit

A unit of employees of Modern Building Cleaning (Nfld.) Limited comprising all full-time and regular part-time employees employed by the company at Gander International Airport, Terminal Building, Gander save and except Manager, Supervisor, Non-working Foremen and those above the rank of Non-working Foremen.

There are 19 employees in the bargaining unit.

3. Newfoundland Fishermen, Food and Allied Workers, Local 1252, Chartered by United Food and Commercial Workers International Union and Petty Harbour Fisheries Limited.

Bargaining Unit

A unit of employees of Petty Harbour Fisheries Limited comprising all employees save and except Manager, Office Staff, Quality Control Supervisor, Non-Working Foremen and those above the rank of Non-Working Foremen employed by the Company at its Petty Harbour Fish Plant.

There are 62 employees in the bargaining unit.

4. United Steelworkers of America, Local Union 6480 and Carol-Wabush Co-op Society Limited, Labrador City.

Bargaining Unit

A unit of employees of Carol-Wabush Co-op Society Limited, Labrador City, comprising all employees save and except General Manager, Office Staff, Store Manager, Store #1970; Grocery Manager, Store #1970; Meat Manager, Store #1970; Produce Manager, Store #1970; Store Manager, Store #1983; Grocery Manager, Store # 1983; Druggist and Furniture Store Manager.

There are 73 employees in the bargaining unit.

5. United Brotherhood of Carpenters and Joiners of America, Millwright Union, Local 1009 and BKR Mechanical Limited, St. John's.

Bargaining Unit

A unit of employees of BKR Mechanical Limited, St. John's comprising Millwrights, Millwright Apprentices and Working Millwright Foremen.

There are 3 employees in the bargaining unit.

6. Retail, Wholesale and Department Store Union, Local 597 and Royal Grocery Limited.

Bargaining Unit

A unit of employees of Royal Grocery Limited comprising all employees of Royal Grocery Limited, Donovan's Industrial Park, save and except Owners, Office Staff, Salespersons, Supervisory Personnel, Non-Working Foremen and those above the rank of Non-Working Foremen.

There are 16 employees in the bargaining unit.

7. United Brotherhood of Carpenters and Joiners of America, Millwright Union, Local 1009 and Newfoundland Zinc Mines Limited, Daniel's Harbour.

Bargaining Unit

A unit of employees of Newfoundland Zinc Mines Limited, Daniel's Harbour comprising all employees save and except Mine Manager, Mine Superintendent, Mine Captain, Mill Superintendent, Plant Superintendent, Safety Officer, Electrical/Surface Supervisor, General Shop Foreman, Chief Engineer, Chief Accountant, Cost Accountant, Clerk/Secretary and employees covered by the certification order issued by the Board on 23 July, 1975.

A hearing was held in this case. There are 28 employees in the bargaining unit.

8. International Union of Operating Engineers, Local 904 and Solid Holdings Limited, Corner Brook and Construction General Labourers', Rock and Tunnel Workers, Local 1208.

Bargaining Unit

A unit of employees of Solid Holdings Limited, Corner Brook comprising Labourers and Operators.

There are 14 employees in the bargaining unit.

9. Newfoundland Association of Public Employees and The Town Council of Portugal Cove.

Bargaining Unit

A unit of employees of The Town Council of Portugal Cove comprising all employees save and except Town Clerk.

There are 2 employees in the bargaining unit.

10. Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Hickman Motors Limited, St. John's.

Bargaining Unit

A unit of employees of Hickman Motors Limited, St. John's, comprising all employees of Hickman Motors Limited, St. John's, Newfoundland employed as Used Car Cleaners, Used Car Lot Attendants, Service Jockeys (Lot) and (Bus Drivers) Tool Room Attendant, Body Shop Lot Attendant, Under Coating Applicators, Ramp Attendants, Wash Bay Attendant, Paint Mixer, Wrecker Driver, Attendant's Body Preparation.

There are 67 employees in the bargaining unit.

11. Retail, Wholesale and Department Store Union, Local 597 and Newfoundland and Labrador Nurses' Union.

Bargaining Unit

A unit of employees of Newfoundland and Labrador Nurses' Union comprising all employees save and except President.

There are 5 employees in the bargaining unit.

12. Newfoundland Association of Public Employees and Roman Catholic School Board for Conception Bay North.

Bargaining Unit

A unit of employees of Roman Catholic School Board for Conception Bay North comprising all employees save and except Superintendent, Assistant Superintendents, Business Manager, Assistant Business Manager, Confidential Secretary to the Superintendent, Non-working Foremen, those above the rank of Non-working

12 cont'd

Foreman and teaching personnel.

There are 30 employees in the bargaining unit.

13. International Brotherhood of Electrical Workers, Local 2330 and R.F. Collins (1977) Limited.

Bargaining Unit

A unit of employees of R.F. Collins (1977) Limited comprising Electricians, Electrician Apprentices and Working Electrician Foremen.

A hearing was held in this case. There are 3 employees in the bargaining unit.

14. Newfoundland Association of Public Employees and Community Living Board, Stephenville.

Bargaining Unit

A unit of employees of Community Living Board, Stephenville, comprising all employees save and except Co-ordinator.

There are 9 employees in the bargaining unit.

15. Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Truck Bodies (1982) Limited.

Bargaining Unit

A unit of employees of Truck Bodies (1982) Limited comprising all employees save and except Manager, Office Staff, Parts Clerk, Non-working Foremen and those above the rank of Non-working Foremen.

A representation vote was held in this case. There are 12 employees in the bargaining unit.

16. Newfoundland Association of Public Employees and Versa Services a division of VS Services Limited.

Bargaining Unit

A unit of employees of Versa Services, a division of VS Services Limited comprising all full-time and regular part-time employees save and except Manager and Assistant Manager, employed by the company at Sir Wilfred Grenfell College, Corner Brook.

There are 16 employees in the bargaining unit.

17. Canadian Union of Public Employees, Local 2172 and John Howard Society of Newfoundland.

Bargaining Unit

A unit of employees of John Howard Society of Newfoundland comprising all employees save and except Group Home Parent employed by the employer at 49 Canada Drive.

There are 4 employees in the bargaining unit.

18. United Steelworkers of America, Local Union 6480 and Peoples Department Store, a division of Marks & Spencer Canada Inc., Wabush.

Bargaining Unit

A unit of employees of Peoples Department Store, a division of Marks & Spencer Canada Inc., Wabush, comprising all employees save and except Manager, Assistant Manager and Office Staff.

There are 18 employees in the bargaining unit.

19. Canadian Union of Public Employees, Local 2768 and Town of Centerville.

Bargaining Unit

A unit of employees of the Town of Centerville comprising all employees save and except Town Clerk.

There are 3 employees in the bargaining unit.

20. Newfoundland Association of Public Employees and Victorian Order of Nurses, St. John's.

Bargaining Unit

A unit of employees of Victorian Order of Nurses, St. John's comprising all employees save and except Executive Director, Secretary-Bookkeeper, and Nurses.

There are 3 employees in the bargaining unit.

21. Newfoundland Association of Public Employees and Molson Newfoundland Brewery Limited, St. John's.

Bargaining Unit

A unit of employees of Molson Newfoundland Brewery Limited, St. John's, comprising all employees of the Respondent's plant on Circular Road, St. John's, and Warehouse at Donovan's, Mount Pearl, save and except Management Staff, Sales Staff, Office Staff, Labratory Technicians, Chief Engineer, Foremen and persons above the rank of Foremen.

21. cont'd

There are 50 employees in the bargaining unit.

22. Newfoundland Association of Public Employees and Town of Stephenville Crossing.

Bargaining Unit

A unit of employees of Town of Stephenville Crossing comprising all employees save and except Town Manager, Confidential Secretary, Non-working Foremen and those above the rank of Non-working Foremen.

There are 6 employees in the bargaining unit.

23. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and Cape Pine Electrical and Construction Limited.

Bargaining Unit

A unit of employees of Cape Pine Electrical and Construction Limited comprising Plumbers, Pipe Fitters, Welders, Sprinkler-fitters, Refrigeration Mechanics, and Instrument Technicians, Non-working Foremen and those above the rank of Non-working Foremen.

There are 5 employees in the bargaining unit.

24. Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Avalon Warehousing and Distribution Limited, St. John's.

Bargaining Unit

A unit of employees of Avalon Warehousing and Distribution Limited, St. John's, comprising all employees of Avalon Warehousing and Distribution Limited working in and out of St. John's location save and except Manager, Foremen, Office Staff, Salesmen and those above the rank of working foremen.

There are 8 employees in the bargaining unit.

25. Fishermen's Union, Local 1252, United Food and Commercial Workers and Greenspond Fish Processors Limited.

Bargaining Unit

A unit of employees of Greenspond Fish Processors Limited comprising all employees of Greenspond Fish Processors Limited save and except General Manager, Office Manager, Office Staff, Chief Engineer, Maintenance Supervisor, Non-working Foremen and those above the rank of Non-working Foremen employed at its Greenspond fish plant.

25. cont'd

A representation vote was held in this case. There are 104 employees in the bargaining unit.

26. Canadian Union of Public Employees, Local 2172 and Eastern Newfoundland and Labrador Children's Home Inc., St. John's.

Bargaining Unit

A unit of employees of Eastern Newfoundland and Labrador Children's Home Inc., St. John's comprising all employees of the Eastern Newfoundland and Labrador Children's Home Inc., employed at or operating from a Group Home at 22 Tobin Crescent save and except Home Parent.

There are 6 employees in the bargaining unit.

27. Newfoundland Association of Public Employees and Terrington Consumers Co-operative Society Ltd., Goose Bay.

Bargaining Unit

A unit of employees of Terrington Consumers Co-operative Society Ltd., Goose Bay, comprising all employees save and except Manager, Assistant Manager, Office Manager, Confidential Secretary, Non-working Supervisor and those above the rank of Non-working Supervisor.

There are 23 employees in the bargaining unit.

28. Newfoundland Association of Public Employees and Bay D'Espoir Integrated School Board.

Bargaining Unit

A unit of employees of Bay D'Espoir Integrated School Board comprising all employees save and except Business Manager, Confidential Secretary, employees covered by subsisting collective agreements, Non-working Foremen and those above the rank of Non-working Foremen.

There are 22 employees in the bargaining unit.

29. International Union of Operating Engineers, Local 904 and Coastal Enterprises Limited, New Brunswick.

Bargaining Unit

A unit of employees of Coastal Enterprises Limited, New Brunswick, comprising Operators, Truck Drivers, and Labourers employed on landscape projects in the Province of Newfoundland excluding Non-working Foremen and those above the rank of Non-working Foremen.

There are 5 employees in the bargaining unit.

30. Newfoundland Association of Public Employees and Labrador East Integrated School Board.

Bargaining Unit

A unit of employees of Labrador East Integrated School Board, Goose Bay, comprising all employees save and except Superintendent, Assistant Superintendent, Business Manager, Assistant Business Manager, Confidential Secretary, Non-working Foremen, those above the rank of Non-working Foremen, employees covered by the certification order issued to the union on the 26th day of August, 1981, and employees covered by subsisting collective agreements.

There are 31 employees in the bargaining unit.

31. Fishermen's Union Local 1252, United Food and Commercial Workers and Fishery Products International Limited, St. John's

Bargaining Unit

A unit of employees of Fishery Products International Limited, St. John's, comprising all employees save and except Plant Manager, Personnel Manager, Office Manager, Confidential Secretary, Assistant Office Manager, Cost Analyst, Controller, Trawler Manager, Chied Electrician, Electronic Engineers, Chief Engineer, Fishmeal Plant Superintendent, Production Manager, Production Foremen, Qualify Control Supervisor, Watchmen, Non-working Foremen and those above the rank of Non-working Foremen and Office Staff employed by the company at its Gaultois fish plant.

There are 202 employees in the bargaining unit.

32. Fishermen's Union, Local 1252, United Food and Commercial Workers and Bradshaws Cove Fisheries Company Limited, Jerseyside

Bargaining Unit

A unit of employees of Bardshaws Cove Fisheries Company Limited, Jerseyside, comprising all employees save and except Manager, Office Staff, Dockside Graders, Non-working Foremen and those above the rank of Non-working Foremen employed by the Company at its Jerseyside fish plant.

There are 43 employees in the bargaining unit.

33. Fishermen's Union, Local 1252, United Food and Commercial Workers and Fishery Products International Limited, St. John's.

Bargaining Unit

A unit of employees of Fishery Products International Limited, St. John's, comprising all employees save and except Plant Manager, Personnel Manager, Confidential Secretary, Office Manager, Assistant Office Manager, Cost Analyst, Controller, Chief Engineer, Maintenance Superintendent, Machine Shop Foreman, Outside Foreman, Production Manager, Production Foreman, Qualify Control Supervisor, Watchmen,

33. cont'd

Non-working Foremen and those above the rank of Non-working Foremen and Office Staff employed by the Company at its Englee fish plant.

There are 106 employees in the bargaining unit.

34. Retail, Wholesale and Department Store Union, Local 597 and J.T. Swyers Company Limited, Bonavista.

Bargaining Unit

A unit of employees of J.T. Swyers Company Limited, Bonavista comprising all full-time and regular part-time employees save and except General Manager, Assistant Manager, Accountant, Branch Manager, Supermarket Manager, Non-working Foremen and those above the rank of Non-working Foremen.

There are 48 employees in the bargaining unit.

35. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 203 and North Atlantic Machinery Limited

Bargaining Unit

A unit of employees of North Atlantic Machinery Limited comprising Boilermakers.

There are 3 employees in the bargaining unit.

36. Fishermen's Union, Local 1252, United Food and Commercial Workers and Fishery Products International Limited, St. John's.

Bargaining Unit

A unit of employees of Fishery Products International Limited, St. John's, comprising all employees save and except Manager, Office Staff, Non-working Foremen and those above the rank of Non-working Foremen employed by the Company at its Cow Head fish plant.

There are 35 employees in the bargaining unit.

37. International Association of Machinists and Aerospace Workers Skyway Lodge 927 and CP Personnel Services Limited, Nova Scotia.

Bargaining Unit

A unit of employees of CP Personnel Services Limited, Nova Scotia, comprising Information Officer save and except Non-working Supervisor and those above the rank of Non-working Supervisor employed by the Company at Gander International Airport.

There are 3 employees in the bargaining unit.

38. Newfoundland Association of Public Employees and Bay St. George Roman Catholic School Board

Bargaining Unit

A unit of employees of Bay St. George Roman Catholic School Board comprising all employees save and except Superintendent, Assistant Superintendent, Business Manager, Confidential Secretary, Non-working Foremen, those above the rank of Non-working Foremen and employees covered by subsisting collective agreements.

There are 21 employees in the bargaining unit.

39. Newfoundland Association of Public Employees and Canadian National Institute for the Blind.

Bargaining Unit

A unit of employees of Canadian National Institute for the Blind comprising all employees of Canadian National Institute for the Blind CaterPlan Services and Residences in the province of Newfoundland save and except Office Staff, Matron, Assistant Matron, Non-working Foremen and those above the rank of Non-working Foremen.

There are 82 employees in the bargaining unit.

40. Retail, Wholesale and Department Store Union, Local 597 and Brookfield Ice Cream Limited, St. John's.

Bargaining Unit

A unit of employees of Brookfield Ice Cream Limited, St. John's comprising all office employees of Brookfield Ice Cream Limited, located at its St. John's office save and except President, Vice-President, General Manager, Comptroller, Sales and Marketing Manager, Division Manager, Sales Supervisor, Sales Representative, Production Manager, Assistant Manager, Frozen Food Sales Manager, Frozen Food Co-ordinator, Assistant to the Sales and Marketing Manager, Manager of Purchasing, Credit Manager, Office Manager, Accounts Payable Supervisor, Data Processing Supervisor, Senior Accountant/Cost Accountant, Confidential Secretary, Sales Order Clerk, Co-op Students and employees covered by subsisting collective agreements.

There are 14 employees in the bargaining unit.

41. Newfoundland Association of Public Employees and Roman Catholic School Board, Exploits-White Bay.

Bargaining Unit

A unit of employees of Roman Catholic School Board, Exploits-White Bay comprising all employees save and except Superintendent, Assistant Superintendent, Business Manager, Accountant, Confidential Secretary, Teachers, Program Co-ordinators, Non-working Foremen and those above the rank of Non-working Foremen.

41. cont'd

There are 34 employees in the bargaining unit.

42. United Brotherhood of Carpenters and Joiners of America, Local 579 and E.C.M. Construction Services Limited, Mount Pearl.

Bargaining Unit

A unit of employees of E.C.M. Construction Services Limited, Mount Pearl, comprising Carpenters, Carpenter Apprentices and Working Carpenter Foremen.

There are 2 employees in the bargaining unit.

43. International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador Local # 1 and Milley's Masonry Limited, Paradise.

Bargaining Unit

A unit of employees of Milley's Masonry Limited, Paradise, comprising Masons.

There are 3 employees in the bargaining unit.

44. Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Conception Bay North Regional Incinerator Association, Harbour Grace.

Bargaining Unit

A unit of employees of Conception Bay North Regional Incinerator Association, Harbour Grace comprising all employees save and except Office Manager.

There are 3 employees in the bargaining unit.

45. United Brotherhood of Carpenters and Joiners of America, Local 579 and Claude Martineau and Sons Limited, Corner Brook.

Bargaining Unit

A unit of employees of Claude Martineau and Sons Limited, Corner Brook, comprising of Carpenters, Carpenter Apprentices and Working Carpenter Foremen.

There are 8 employees in the bargaining unit.

Applications for Certification - Rejected

1. International Association of Heat and Frost Insulators and Asbestos Workers, Local 137 and Shoal Enterprises Limited, Paradise.

Decision

The Board was satisfied that International Association of Heat and Frost Insulators and Asbestos Workers, Local 137 did not represent a majority of the employees in the proposed bargaining unit.

A representation vote was conducted in this case.

2. International Brotherhood of Electrical Workers, Local Union 2330 and EFCO Enterprises Limited, Stephenville.

Decision

The Board was satisfied that International Brotherhood of Electrical Workers, Local Union 2330 did not represent a majority of employees in the proposed bargaining unit.

A representation vote was conducted in this case.

3. International Brotherhood of Electrical Workers, Local 2330 and Cape Pine Electrical Limited.

Decision

The Board was satisfied that International Brotherhood of Electrical Workers, Local 2330 did not have the support of a majority of the employees in the proposed bargaining unit.

A hearing and a representation vote was held in this case.

4. International Brotherhood of Electrical Workers, Local 2330 and Frelco Limited, Stephenville.

Decision

The Board was satisfied that the certification order issued to International Brotherhood of Electrical Workers, Local 2330 on the 20th day of March, 1974 affecting Frelco Limited, Stephenville included the employees applied for in this application for certification.

5. Newfoundland Association of Public Employees and Memorial United Church Group Home.

Decision

The Board noted that the Order-in-Council dated on the 6th day of June, 1985 and published in the Newfoundland Gazette on the 28th day of June, 1985, where His Honour the Administrator in Council designated "group homes" as employing "employees" within the meaning of the Public Service (Collective Bargaining) Act, 1973, therefore The Board determined that it did not have jurisdiction to deal with the application since it was filed under The Labour Relations Act.

6. Newfoundland Association of Public Employees and St. Augustine's Children's Home.

Decision

The Board noted the Order-in-Council dated the 6th day of June, 1985 and published in the Newfoundland Gazette on the 28th day of June, 1985, where His Honour the Administrator in Council designated all "group homes" as employing "employees" within the meaning of The Public Service (Collective Bargaining) Act, 1973, therefore The Board determined that it did not have jurisdiction to deal with the application since it was filed under The Labour Relations Act.

7. Newfoundland Association of Public Employees and Pine Heights Residents Association.

Decision

The Board noted the Order-in-Council dated the 6th day of June, 1985, and published in the Newfoundland Gazette on the 28th day of June, 1985, where His Honour the Administrator in Council designated all "group homes" as employing "employees" within the meaning of The Public Service (Collective Bargaining) Act, 1973, therefore, the Board determined that it did not have jurisdiction to deal with the application since it was filed under the Labour Relations Act.

8. Local Union No. 2330 of the International Brotherhood of Electrical Workers and Westinghouse Canada Inc., Industry Services Division, St. John's.

Decision

The Board was satisfied that Westinghouse Canada Inc., Industry Services Division, St. John's was not the employer of the employees in the proposed bargaining unit employed at the Abitibi-Price Mill at Grand Falls.

9. Canadian Union of Public Employees, Local 2172 and Avalon Consolidated School Board, St. John's.

Decision

The Board was satisfied that Canadian Union of Public Employees Local 2172 did not represent a mamority of the employees in the proposed bargaining unit.
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A representation vote was conducted in this case.

10. Newfoundland Association of Public Employees and Gateway Holdings Limited.

Decision

The Board was satisfied that Newfoundland Association of Public Employees did not have the support of the majority of the employees in the proposed bargaining unit.

A representation vote was conducted in this case.

Applications for Certification - Withdrawn

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers International Union and Cape Pine Fisheries Limited, Witless Bay.

2. Newfoundland Fishermen, Food and Allied Workers, Local 1252, Chartered by United Food and Commercial Workers International Union and Cape Pine Fisheries Limited, Bay Bulls.

3. United Brotherhood of Carpenters and Joiners of America, Local 579 and N.D. Dobbin Limited.

4. United Brotherhood of Carpenters and Joiners of America, Millwright Local Union 1009 and E.F. Barnes Limited, St. John's.

5. Newfoundland Association of Public Employees and Avalon Consolidated School Board, St. John's and Canadian Union of Public Employees, Local 2172.

6. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and Planet Development Corporation Limited, St. John's.

7. International Brotherhood of Electrical Workers, Local Union No. 2330 and D.F. Squires Electrical, St. John's.

8. Newfoundland Association of Public Employees and Canadian National Institute for the Blind.

9. International Brotherhood of Electrical Workers, Local Union No. 2330 and Ryno Electric Limited, Corner Brook.

10. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 764 and Metal Fab Limited, St. John's.

Applications for Certification - Pending

1. United Brotherhood of Carpenters and Joiners of America, Local 579 and N. & L. Construction Limited, Stephenville.

2. International Union of Operating Engineers, Local 904 and McNamara Construction Company (A Division of George Wimpy Canada Limited).

3. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, Local 203 and Mechanical Installations Company Limited.

4. Newfoundland Association of Public Employees and Sharpe-Valley Wholesalers Limited.

5. Fisherman's Union Local 1252, United Food and Commercial Workers and Holiday Inn (A Division of Atlific Inc.).

6. Newfoundland Association of Public Employees and G. & M. Enterprises Limited, Corner Brook.

7. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 764 and Premier Mechanical Limited.

8. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 764 and Maritime Formwork Limited, Armdale, Nova Scotia.

9. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 764 and Pipe Fab Limited, St. John's.

10. Memorial University of Newfoundland Faculty Association and Memorial University of Newfoundland, St. John's.

11. International Brotherhood of Electrical Workers, Local Union 2330 and N.U.C.O., St. John's.

12. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and The Town of Wabana, Bell Island.

13. Sheet Metal Workers, Local 512 and Noel's Limited, St. John's.

Applications for Revocation of Certification - Granted

1. Terry Kettle, et al. and Retail, Wholesale and Department Store Union, Local 597 and A.J. Coleman and Sons Limited, Corner Brook.

Decision

The Board was satisfied that Retail, Wholesale and Department Store Union, Local 597 no longer represented a majority of employees in the certified bargaining unit and ordered that the certification order issued to Retail, Wholesale and Department Store Union, Local 597 on the 26th day of February, 1980, as amended by the Board order dated the 6th day of May, 1982, affecting A.J. Coleman and Sons Limited, Corner Brook be revoked.

A representation vote was held in this case.

2. Diane Roche, et al. and Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Newfoundland and Labrador Nurses' Union.

Decision

The Board determined that Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America no longer represented a majority of the employees in the certified bargaining unit and ordered that the certification order issued to Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on the 15th day of June , 1977, affecting Newfoundland and Labrador Nurses' Union be revoked.

3. Gerald Joseph Crocker and Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Offshore Personnel Limited.

Decision

The Board was satisfied that Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America no longer had the support of a majority of employees in the certified bargaining unit and ordered that the certification order issued by the Board to Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America affecting Offshore Personnel Limited be revoked.

Applications for Revocation of Certification - Rejected

1. Earle LeShane, et al. and Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Moffatt Brothers Moving and Storage (A Division of Canadian Pacific Express and Transport Limited.)

Decision

The Board was satisfied that Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America had not lost the support of a majority of employees in the bargaining unit and rejected the application.

A representation vote was held in this case.

2. David Barnes, et. al. and Retail, Wholesale and Department Store Union, Local 597 and East Coast Meats Limited (formerly Philip Parsons Limited).

Decision

The Board directed that a representation vote be conducted to determine whether the employees wished to revoke the said certification order and the vote was set and conducted by the Board Returning Officer on 20 September, 1985, between the hours of 10:00 a.m. and 11:00 a.m., and none of the eligible voters voted within the scheduled time. Therefore the Board ordered that the application for revocation of certification be rejected.

3. Selby Landgon, et. al. and Newfoundland Fishermen, Food and Allied Workers, Local 1252, Chartered by United Food and Commercial Workers International Union and A. N. Antle Limited, Botwood.

Decision

The Board was not satisfied that Newfoundland Fishermen, Food and Allied Workers, Local 1252, Chartered by United Food and Commercial Workers International Union had lost the support of a majority of the employees in the certified bargaining unit and rejected the application.

A hearing was held in this case.

Applications for Revocation of Certification - Withdrawn

1. Tony Emberley and Ron Collins (on behalf of unionized employees at Central Dairies) and Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Central Dairies, a division of Farmers Co-operative Dairy Limited, St. John's.

2. Harvey Autocarriers Limited and Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Applications for Revocation of Certification - Pending

1. Edward Hollohan and Kevin Sparkes (employees of McNamara Construction Company) and Construction and General Labourers Rock and Tunnel Workers, Local 1208.

   The Board ordered a vote and reasons are attached as Appendix 2 of Schedule "B".

2. David Barnes, Robert Peddle, George Edgecombe and the Employees of East Coast Meats Limited and Retail, Wholesale and Department Store Union, Local 597.

3. Gladys Powell and Lloyd Abbott on behalf of the Employees of J. T. Swyers Limited, Bonavista, and Retail, Wholesale and Department Store Union, Local 597.

Applications for Termination of Bargaining Rights - Pending

1. Amador Decker, Keith Shears (employees of McNamara Construction Company) and Construction and General Labourers' Rock and Tunnel Workers, Local 1208.

2. George Budgen, et.al. (employees of The Lundrigan Group Limited) and Construction General Labourers' Rock and Tunnel Workers, Local 1208.

Applications Under Section 118 - Unfair Labour Practices

1. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 354 and (Carling O'Keefe Breweries of Canada Limited as represented by Breweries Industrial Relations Association Limited).

Decision

The Board considered the complaint filed pursuant to Section 118(3)(b) of the Act and determined that:

(1) the Board does have jurisdiction to deal with a complaint under Section 118 of the Act after the collective agreement is expressed to have expired;

(2) the collective agreement does not expire until all of the provisions of the Act have been met;

(3) the Respondent did breach Section 75(a) when it failed to bargain in good faith with the Applicant, and pursuant to Section 119 of the Act, the Board did direct that:

(1) Carling O'Keefe Breweries of Canada Limited as represented by Breweries Industrial Relations Association Limited meet forthwith with the Applicant and commence to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the agreement.

(2) Attempt to agree on the compensation, if any, that is due the employees as a result of the breach of 75(a) of the Act.

(3) the Board retains jurisdiction to deal with the matter of compensation in the event the parties are unable to agree.

A hearing was held in this case.

2. Newfoundland Association of Public Employees and Town of Stephenville Crossing.

Decision

The Board was satisfied that the Town of Stephenville Crossing did violate Section 45 of the Act when Cameron Young was laid off and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that the Town of Stephenville Crossing -

(1) Compensate Cameron Young for wages and other employee benefits lost while laid off on the 10th and 11th of June, 1985, less any income received during this period.

(2) The Board will retain jurisdiction in the event that the parties are unable to agree on the amount of compensation.

3. Newfoundland Association of Public Employees and Town of Stephenville Crossing.

Decision

The Board was satisfied that the Town of Stephenville Crossing had not violated Sections 23(a), 24(1)(a) and 25(2)(b) of the Act and rejected the application.

4. Newfoundland Association of Public Employees and Jim Bradley, Dave McCall and Canadian Institute for the Blind.

Decision

The Board was satisfied that Jim Bradley, Dave McCall and Canadian Institute for the Blind did not violate Section 24 and 25 of the Act when the employment of Phyllis Kavanagh was terminated and rejected the application.

A hearing was held in this case.

5. Newfoundland Association of Public Employees and Town Council of Stephenville.

Decision

The Board was satisfied that the Town Council of Stephenville had not violated Sections 75(a) and (b) of the Act and rejected the application.

6. Newfoundland Fishermen, Food and Allied Workers, Local 1252, Chartered by United Food and Commercial Workers International Union and Cape Pine Fisheries Limited, Witless Bay.

The complaint was withdrawn.

7. Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Moffatt Brothers Moving and Storage, a division of Canadian Pacific Express and Transport Limited.

   The complaint was withdrawn.

8. Newfoundland Association of Public Employees and The Town of Lewisporte.

   The complaint was withdrawn.

9. United Steelworkers of America, Local 7144 and Liquid Air Inc., St. John's.

   The complaint was withdrawn.

10. Canadian Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers, Local 354 and Breweries' Industrial Relations Association Limited.

    The complaint was withdrawn.

11. International Union of Operating Engineers, Local 904 and H. Knee.

    The complaint was withdrawn.

12. International Union of Operating Engineers, Local 904 and Solid Holdings Limited.

    The complaint was withdrawn.

13. Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Hickman Motors Limited, St. John's

    The complaint was withdrawn.

14. Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and The Royal Garage Limited, St. John's.

    The complaint was withdrawn.

15. International Association of Machinists and Aerospace Workers, Lodge 927 _and_ CP Personnel Limited.

    The complaint was withdrawn.

Complaints Pending before the Board

1. United Brotherhood of Carpenters and Joiners of America, Local 579 _and_ T. & G. Woodworkers Limited, Appleton.

2. United Brotherhood of Carpenters and Joiners of America, Local 1009, Millwright Union _and_ Robco Marine Limited, St. John's.

3. The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 _and_ W.W. Lester Limited.

4. The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 _and_ Planet Development Limited.

5. International Union of Bricklayers and Allied Craftsmen, Local No. 1 _and_ Jack Green Limited, St. John's.

6. Canadian Union of Public Employees _and_ Town of LaScie.

7. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 _and_ Planet Development Corporation Limited.

8. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 _and_ Mechanical Installations Company Limited.

9. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers of America, Local 203 _and_ Mechanical Installations Company Limited.

10. Newfoundland Association of Public Employees _and_ Michael King, Veronica King and Gateway Holdings.

11. Retail, Wholesale and Department Store Union, Local 597 _and_ J.T. Swyers Company Limited, Bonavista.

12. Newfoundland Association of Public Employees and Terrington Consumers Co-operative.

13. Newfoundland Association of Public Employees and Gateway Holdings Limited.

14. Fishermen's Union Local 1252, United Food and Commercial Workers and Holiday Inn, Gander (a division of Atlific (Nfld.) Limited)

15. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local 740 and Newfoundland Construction Labour Relations Association.

16. Newfoundland Association of Public Employees and The Canadian National Institute for the Blind.

17. Newfoundland Association of Public Employees and G & M Enterprises Limited.

Applications under Section 126 - Complaint Against a Bargaining Agent for Failure to Act in Good Faith in Handling a Grievance

1. Cecil Williams and Construction General Labourers', Rock and Tunnel Workers, Local 1208.

Decision

The Board was satisfied that Construction General Labourers', Rock and Tunnel Workers, Local 1208 did not fail to act in good faith in handling of a grievance Cecil Williams had against Simon Lono Limited and rejected the application.

A hearing was held in this case.

Applications Pending Before the Board

1. Mary Browne and Canadian Brotherhood of Railway, Transport and General Workers, Local 855.
2. Augustine Connors and Canadian Paperworkers Union, Local 119.

3. Amador Decker and Construction and General Labourers', Rock and Tunnel Workers, Local 1208.

4. Keith Shears and Construction and General Labourers', Rock and Tunnel Workers, Local 1208.

5. Edward Hollahan and Construction and General Labourers', Rock and Tunnel Workers, Local 1208.

6. Richard Randell and Construction and General Labourers', Rock and Tunnel Workers, Local 1208.

7. Kevin Sparkes and Construction and General Labourers', Rock and Tunnel Workers, Local 1208.

8. Gordon Patey and Local 1009, United Brotherhood of Carpenters and Joiners of America.

9. Glen Briffett, Glovertown and International Brotherhood of Electrical Workers, Local 2351.

10. David Pottle and Fisherman's Union Local 1252, United Food and Commercial Workers

Applications pursuant to Section 85 of the Labour Relations Act

1. Frederick R. Woolridge, Q.C., Arbitrator and United Brotherhood of Carpenters and Joiners of America, Local 579 and Bradco Construction Limited and N.D. Dobbin Limited and John Jacobs and Sons.

Decision

The Board was satisfied that N.D. Dobbin Limited was not bound by the collective agreement in effect between United Brotherhood of Carpenters and Joiners of America, Local 579 and Newfoundland Construction Labour Relations Association.

A hearing was held in this matter.

2. H. Noseworthy and United Steelworkers of America, Locals 7190 and 8484 and Consolidated Rambler Mines Limited, Baie Verte.

2. cont'd

Decision

The Board determined that there was a collective agreement in effect between United Steelworkers of America, Locals 7190 and 8484 and Consolidated Rambler Mines Limited, Baie Verte, effective the 1st day of October, 1980 to the 30th day of September, 1982.

A hearing was held in this case.

3. H. Noseworthy and Retail, Wholesale and Department Store Union, Local 597 and Central Trust Company.

Decision

The Board ordered that Central Trust Company was bound by the collective agreement in effect between Retail, Wholesale and Department Store Union, Local 597 and Gorett Limited trading under the firm name and style of Mamateek Motor Inn, Corner Brook, with effect from the 30th day of October, 1981 to the 29th day of October, 1983, as extended.

A hearing was held in this case.

4. H. Noseworthy and Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Canadian Pacific Express & Transport Ltd., and Brotherhood of Railway and Airline Clerks.

Decision

The Board, after considering the representations of Canadian Pacific Express & Transport Ltd. and a Supreme Court order filed on 14 June, 1985 decided that it did not have jurisdiction to deal with the application.

5. International Union of Operating Engineers, Local 904 and Foundation Lundrigan - Joint Venture and Construction General Labourers', Rock and Tunnel Workers, Local 1208.

Decision

On the 10th day of June, 1985 the Labour Relations Board decided that it had jurisdiction under Section 17 of the Act to determine the matter referred to it by the International Union of Operating Engineers, Local 904.

However, a Supreme Court order filed on 14 June, 1985 ruled that the Minister of Labour had no power to refer a matter to the Board pursuant to Section 17 of the Act.

Subsequently, the Solicitor for Foundation Lundrigan - Joint Venture requested the Board in view of the Supreme Court decision, to review its order of 10 June, 1985 pursuant to Section 18 of the Act.

Therefore, the Board did reconsider its decision of 10 June, 1985 and declined jurisdiction to hear the application.

5. cont'd

A hearing was held in this case.

6. H. Noseworthy and International Union of Operating Engineers Local 904 and N. and L. Construction Limited, Stephenville.

The matter was lapsed.

Applications under Section 18 - Reconsideration and Amendments of Decisions

1. H. Noseworthy and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and Sooley's Plumbing and Heating Limited, St. John's.

Decision

A Supreme Court order filed on 14 June, 1985, ruled that the Minister of Labour had no jurisdiction to refer a matter to the Board pursuant to Section 17 of the Act, and the Solicitor for Sooley's Plumbing and Heating Limited, St. John's, in view of the Court decision, had requested the Board to issue an order declining jurisdiction, therefore the Board decided that it did not have jurisdiction to deal with the application.

A hearing was held in this case.

2. United Brotherhood of Carpenters and Joiners of America, Local 579 and Tri-City Construction Limited and Sherwood Construction Limited.

Decision

The Board, following consideration of the representations of the interested parties, for greater certainty, decided to amend the order of the 24th September, 1984 issued to United Brotherhood of Carpenters and Joiners of America, Local 579 affecting Sherwood Construction Limited and Tri-City Construction Limited by adding the words, "at the Bonavista job site", immediately following Limited in the third paragraph of the said order.

3. The Town of Lewisporte and Newfoundland Association of Public Employees.

Decision

The Board received an application from The Town of Lewisporte to exclude the classification of Office Secretary from the bargaining unit and Newfoundland Association of Public Employees agreed

3. cont'd

with the request. Therefore, the certification order issued by the Board on the 20th day of October, 1982 to Newfoundland Association of Public Employees was amended by excluding the classification of Office Secretary.

4. Newfoundland Association of Public Employees and Nova Services Limited.

Decision

The Board received an application from Newfoundland Association of Public Employees requesting an amendment to the bargaining unit to include all part-time employees and Nova Services Limited agreed, therefore, the Board ordered that the Order issued to Newfoundland Association of Public Employees on the 15th day of February, 1983 be amended by including all part-time employees save and except part-time banquet employees.

5. J. C. Pratt (1974) Limited, St. John's and Sheet Metal Workers International Assocation, Local 512.

Decision

The Board received an application from J. C. Pratt (1974) Limited, St. John's to amend the order to exclude the classifications of Draftsmen and Inventory Control Clerk and Sheet Metal Workers International Association, Local 512 concurs with the request. Therefore, the Board ordered that the certification order issued to Sheet Metal Workers International Association, Local 512, on the 15th day of February, 1985 be amended by excluding from the bargaining unit the classifications of Draftsmen and Inventory Control Clerk.

6. Retail, Wholesale and Department Store Union, Local 597 and Eastern Drug Service, a division of National Drug Limited, Quebec.

Decision

The Board received an application from Retail, Wholesale and Department Store Union, Local 597, requesting the Board to amend the said order to include the classification of Warehouse Manager/ Supervisor in the bargaining unit and following investigation and consideration of the representations of the interested parties, the Board saw no reason to alter its original decision. Therefore, the application was rejected.

Reasons for decision were issued in this case and are attached as Appendix "6", Schedule "B".

7. Royal Garage Limited, St. John's and Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

7. cont'd

Decision

The Board received an application from Royal Garage Limited, St. John's to amend the order to exclude the classification of Dispatcher and following investigation and consideration of the representations of the interested parties the Board saw no reason to alter its original decision. Therefore, the application was rejected.

8. International Association of Machinists and Aerospace Workers Westside Lodge 544 and Beothuck Ford Sales Limited, Grand Falls.

Decision

The Board received an application from International Association of Machinists and Aerospace Workers Westside Lodge 544 to amend the order to include the classification of Warranty Clerk and following investigation and consideration of the representations of the interested parties the Board saw no reason to alter its original decision. Therefore, the application was rejected.

A hearing was held in this case.

9. Town of Paradise, Paradise and Newfoundland Association of Public Employees.

The matter was removed from the agenda.

Applications Pending Before the Board

1. Construction General Labourers', Rock and Tunnel Workers, Local 1208 and Edward Hollohan, et.al., and McNamara Construction Company.
2. E.C. M. Construction Services Limited, Mount Pearl and United Brotherhood of Carpenters and Joiners of America, Local 597.

Applications pursuant to Section 89 of the Labour Relations Act

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252 chartered by United Food and Commercial Workers International Union and Atlantic Fisheries Limited.

1. cont'd

Decision

The Board determined that there was a sale or transfer of a business within the meaning of Section 89 of the Act between Newfoundland Quick Freeze Limited and Rich Products of Canada Limited and further a sale or transfer of a business between Rich Products of Canada Limited and Atlantic Fisheries Limited and there existed a collective agreement between Newfoundland Fishermen, Food and Allied Workers, Local 1252 chartered by United Food and Commercial Workers International Union and Newfoundland Quick Freeze Limited effective from 1 January, 1980 to 31 December, 1982. Therefore, the Board ordered that Atlantic Fisheries Limited was bound by the collective agreement in effect between Newfoundland Quick Freeze Limited and Newfoundland Fishermen, Food and Allied Workers, Local 1252 chartered by United Food and Commercial Workers International Union effective from 1 January, 1980 to 31 December, 1982.

2. International Union of Operating Engineers, Local 904 and Canadian Mine Development Limited and Construction General Labourers', Rock and Tunnel Workers, Local 1208.

Decision

The Board determined that there was a transfer within the meaning of Section 89 of the Act between Gold River Construction Limited and Canadian Mine Development Limited and ordered that Canadian Mine Development Limited was bound by the certification order issued to International Union of Operating Engineers, Local 904, on the 20th day of June, 1984 affecting Gold River Construction Limited.

A hearing was held in this case.

3. Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Offshore Personnel Limited and Harvey Offshore Services Limited.

Decision

The Board determined that there was a sale of a business within the meaning of Section 89 of the Act between Harvey Offshore Services Limited and Offshore Personnel Limited and ordered that Offshore Personnel Limited was bound by the collective agreement in effect between Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Harvey Offshore Services Limited effective 1 June, 1982, to 31 May, 1984.

A hearing was held in this case.

3. cont'd

Subsequently, the Board received a request from Offshore Personnel Limited to amend the order to reflect the understanding of the parties at the hearing that Offshore Personnel Limited would be bound by the order of certification issued to Transport and Allied Worlers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America on the 14th day of May, 1980 together with the obligation to bargain pursuant to the notice to bargain served in accordance with tne said collective agreement.

The Board, following a review of the evidence adduced at the hearing, was satisfied that the evidence reflects the request received from Offshore Personnel Limited and ordered that the order issued on the 31st day of January, 1985, be amended to order that Offshore Personnel Limited was bound by the certification order issued to Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on the 14th day of May, 1980 together with the obligation to bargain pursuant to the notice to bargain.

Reasons for decision are attached as Appendix 3 of Schedule "B".

4. United Brotherhood of Carpenters and Joiners of America, Local 579 and N. & L. Construction Limited and Pinsent Construction Company Limited.

Decision

The Board was satisfied that there was a transfer within the meaning of Section 89 of the Act between Pinsent Construction Company Limited and N. & L. Construction Limited and ordered that N. & L. Construction Limited was bound by the collective agreement in effect between United Brotherhood of Carpenters and Joiners of America, Local 579 and Newfoundland Construction Labour Relations Association in effect from October 7, 1982 to April, 30, 1985.

A hearing was held in this case.

Reasons for decision are attached as Appendix 4 of Schedule "B".

5. The United Brotherhood of Carpenters and Joiners of America, Local 579 and Wallace Compton Construction Limited and Almark Construction Limited.

Decision

The parties notified the Board of their agreement and indicated their consent to an order to be made by the Board pursuant to the terms of their agreement. Therefore, the Board ordered that effective July 1, 1984, Almark Construction Limited is bound by the collective agreement made between The United Brotherhood of Carpenters and Joiners of America, Local 579, and Newfoundland Construction Labour Relations Association in effect from October 7, 1982 to April 30, 1985, PROVIDED HOWEVER, that the liability of Almark Construction Limited under the collective agreement for the period from July 1, 1984 to the date of this order shall be limited to the following articles of the collective agreement:

5. cont'd

article 4.02	(industry fund)
articles 5.03 & 5.04	(union deductions)
article 13	(health and welfare)
article 14	(pension contribution)

AND THAT, from the date of this order, Almark Construction Limited shall be bound by all terms of the said collective agreement.

6. United Brotherhood of Carpenters and Joiners of America, Local 1009 and Robco Marine Limited.

Decision

The Board determined that there was a sale within the meaning of Section 89 of the Act between E.F. Barnes Limited and Robco Marine Limited and ordered that Robco Marine Limited was bound by the collective agreement in effect between United Brotherhood of Carpenters and Joiners of America, Local 1009 and E.F. Barnes Limited effective 1 July, 1984 to 30 June, 1985.

A hearing was held in this case.

7. International Association of Machinists and Aerospace Workers, Westside Lodge 544 and Atlantic Concrete, a division of The Lundrigan Group Limited, Corner Brook.

Decision

The Board determined that there was no sale, lease or transfer within the meaning of Section 89 of the Act and the application was rejected.

A hearing was held in this case.

8. United Brotherhood of Carpenters and Joiners of America, Local 579 and Bradco Construction Limited and N.D. Dobbin Limited.

Decision

The Board was satisfied that there had not been a sale, lease or transfer within the meaning of Section 89 of the Act between Bradco Construction Limited and N.D. Dobbin Limited and the application was rejected.

A hearing was held in this case.

9. Canadian Union of Public Employees, Local 1270 and St. Clare's Mercy Hospital, St. John's and Newfoundland Association of Public Employees.

9. cont'd

Decision

The Board decided that it did not have jurisdiction to deal with the application and the application was rejected.

A hearing was held in this case.

10. Canadian Union of Public Employees, Local 1270 and The Salvation Army Grace General Hospital, St. John's.

Decision

The Board decided that it did not have jurisdiction to deal with the application and the application was rejected.

11. International Association of Machinists and Aerospace Workers, Lodge 927 and Professional Personnel Services Limited and CP Personnel Services Limited.

Decision

The Board was satisfied that there had not been a sale, lease, transfer or other disposition within the meaning of Section 89 of the Act between Professional Personnel Services Limited and CP Personnel Services Limited and the application was rejected.

A hearing was held in this case.

Reasons for decision are attached as Appendix 5 of Schedule "B".

12. Construction and General Labourers', Rock and Tunnel Workers, Local 1208 and Canadian Mine Development Limited and International Union of Operating Engineers, Local 904.

The matter was lapsed.

13. Newfoundland Fisherman, Food and Allied Workers, Local 1252 and Petty Harbour Fisheries Limited.

The matter was lapsed.

Applications pending before the Board

1. Bricklayers and Allied Craftsmen, Local No. 1 and Jack Green Limited and Lewis Tuttle and Sons Limited.

2. N. & L. Construction Limited and Pinsent Construction Limited and United Brotherhood of Carpenters and Joiners of America, Local 579.

3. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and W. W. Lester (1978) Limited and Planet Development Corporation Limited.

4. Stephenville Minor Hockey Association and Newfoundland Association of Public Employees and Town of Stephenville.

5. International Union of Operating Engineers, Local 904 and Murphy's Truck and Car Services Limited and D.C.H. Services Limited.

6. Newfoundland Association of Public Employees and Town of Stephenville.

7. United Brotherhood of Carpenters and Joiners of America, Local Union 2564 and J. W. Bird & Company Limited and F. M. O'Leary Limited, St. John's.

Application to Change Name or Affiliation of Trade Union (Section 91)

1. (a) Soft Drink Workers, Local Union No. 355 of the Hospitality and Service Worker's Union and Wometco Newfoundland Limited.

1.(a) cont'd

Decision

The Board ordered that the certification orders issued to Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 15th day of March, 1978; on the 5th day of April, 1978; on the 4th day of September, 1980; and on the 10th day of December, 1980 affecting Wometco Newfoundland Limited be amended by deleting Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and substituting therefore Soft Drink Worker's, Local Union No. 355 of the Hospitality and Service Worker's Union.

1.(b) Soft Drink Workers, Local Union No. 355 of the Hospitality and Service Worker's Union and The Bond Hotel Company Limited, St. John's, trading under the firm name and style of The Lester Hotel.

Decision

The Board ordered that the certification order issued to Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 14th day of November, 1984, affecting The Bond Hotel Company Limited, St. John's, trading under the firm name and style of The Lester Hotel be amended by deleting Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and substituting therefore Soft Drink Worker's Local Union No. 355 of the Hospitality and Service Worker's Union.

2.(a) Soft Drink and Bakery Workers, Local Union No. 353 affiliated with the Hospitality and Service Worker's Union and Browning Harvey Limited.

Decision

The Board ordered that certification orders issued to Brewery and General Workers, Local Union 354 of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC on the 23rd day of January, 1970 affecting Browning Harvey Limited be amended by deleting Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 353 and substituting therefore Soft Drink and Bakery Workers, Local Union No. 353 affiliated with the Hospitality and Service Worker's Union.

2.(b) Soft Drink and Bakery Workers, Local Union No. 353 affiliated with the Hospitality and Service Worker's Union and West Coast Bakery Limited, Corner Brook.

2.(b) cont'd

Decision

The Board ordered that the certification order issued to Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 13th day of February, 1979 affecting West Coast Bakery Limited, Corner Brook be amended by deleting Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and substituting therefore Soft Drink and Bakery Workers, Local Union No. 353, affiliated with the Hospitality and Service Workers' Union.

3. Brewery Worker's, Local Union No. 351, affiliated with the Hospitality and Service Worker's Union and Labatt Brewery Company Limited.

Decision

The Board ordered that the certification order issued to Local Union No. 351, Brewery and Soft Drink Workers of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America on the 25th day of February, 1964, as amended affecting Labatt Brewery Company Limited be amended by deleting Local 351 of the Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and substituting therefor Brewery Worker's, Local Union No. 351, affiliated with the Hospitality and Service Worker's Union.

4.(a) Newfoundland Association of Public Employees and Labatt Brewing Company Limited.

Decision

The Board ordered that the certification order issued to Local 351 of the Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 25th day of February, 1964, as amended affecting Labatt Brewing Company Limited be amended by deleting Brewery Workers' Local Union No. 351 affiliated with the Hospitality and Service Workers Union and substituting therefor Newfoundland Association of Public Employees.

4.(b) Newfoundland Association of Public Employees and West Coast Bakery Limited, Corner Brook.

Decision

The Board ordered that the certification order issued to Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 13th day of February, 1979, be amended by deleting Soft Drink and Bakery Workers, Local Union No. 353, affiliated with the Hospitality and Service Workers Union and substituting therefor Newfoundland Association of Public Employees.

4.(c) Newfoundland Association of Public Employees and Browning Harvey Limited

Decision

The Board ordered that the certification orders issued to International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC on the 23rd day of January, 1970 be amended by deleting Soft Drink and Bakery Workers, Local Union No. 353, affiliated with the Hospitality and Service Workers' Union and substituting therefor Newfoundland Association of Public Employees.

4.(d) Newfoundland Association of Public Employees and The Bond Hotel Company Limited, St. John's trading under the firm name and style of The Lester Hotel.

Decision

The Board ordered that the certification orders issued to Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 14th day of November, 1984 be amended by deleting Soft Drink Workers' Local Union No. 355 of the Hospitality and Service Workers' Union and substituting therefor Newfoundland Association of Public Employees.

4.(e) Newfoundland Association of Public Employees and Wometco Newfoundland Limited, St. John's.

Decision

The Board ordered that the certification orders issued to Local Union No. 353, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers on the 15th day of March, 1978; on the 5th day of April, 1978; on the 4th day of September, 1980 and on the 10th day of December, 1980 be amended by deleting Soft Drink Workers, Local Union No. 355 of the Hospitality and Service Workers' Union and substituting therefor Newfoundland Association of Public Employees.

Applications under Section 69 - Determination of Special Projects

1. Gold River Construction Limited and Newfoundland and Labrador Hydro, et. al.

   The matter was lapsed.

Appendix 1 Schedule "B"

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

United Brotherhood of Carpenters
and Joiners of America, Local 579,

- and -

Tri-City Construction Limited,

- and -

Sherwood Construction Limited

BEFORE: Gordon G. Easton, Q.C., Chairman
F.W. Russell and J. Walsh, Members

FOR THE RESPONDENTS: M. Harrington

FOR THE APPLICANT: E. Shortall

REASONS FOR DECISION

The United Brotherhood of Carpenters and Joiners of America, Local 579, made an application for certification for employees of Tri-City Construction Limited on the 7th of September, 1983. This application was received by the Board on the 9th of September, 1983. Tri-City Construction Limited received a copy of the application on the 23rd September, 1983. The letter from the Board enclosing a copy of the application was dated 12 September, 1983.

Sherwood Construction Limited was incorporated on the 19th of September, 1983. It should be noted at this time that Tri-City Construction Limited, Sherwood Construction Limited, and Marco Limited have the following as shareholders:

Tri-City Construction Limited

Directors - Margaret E. Hickman, President; Thomas J. Hickman - Vice President; and David Martin, Secretary

Shareholders - Margaret E. Hickman, Thomas J. Hickman and Christopher Hickman.

Sherwood Construction Limited

Directors - Margaret E. Hickman, President; David Martin, Vice President; and Thomas J. Hickman, Secretary.

Shareholders - Michael Harrington, Ernest Reid Augustus Lilly, Margaret Hickman, Thomas Hickman, and Christopher Hickman.

Marco Limited

Directors - Thomas J. Hickman, President; Margaret E. Hickman, Secretary; David Martin, Vice President; and Frederick Pelley.

Shareholders - Thomas J. Hickman, Margaret E. Hickman, Christopher Hickman, and Thomas J. Hickman.

At the time that Local 579 applied for the employees of Tri-City Construction Limited that company had employees working at the Bonavista Hospital site; Memorial University; the Confederation Building; and the Bay Roberts Arena. The application pursuant to Section 89 of the Act concerned only the Bonavista project. There was no discussion with respect to any other project.

The Board certified Local 579 for employees of Tri-City Construction Limited on 15 December, 1983. In the meantime on 7 October, 1983, the four employees of Tri-City Construction Limited who were working on the Bonavista project were called together by the superintendent and advised that they were to be laid off. At the same time they were advised by the Company superintendent, Mr. Pinsent, that they could go to work with Sherwood Construction Limited on Monday, 10 October, 1983, if they signed a declaration stating that they were not members of any union. The employees refused to do this and the declaration was subsequently shortly withdrawn.

On 10 October, 1983, all of the employees except one Junior Keel returned to work. They went to work on the same location, with the same supervisor doing essentially the same work. The employees at that time received a raise of $1.25 an hour since from the evidence which was adduced at the hearing it appears that other contractors in the area were paying their employees at the higher rate.

Section 89 applications are generally troublesome but no more so than in the construction industry. There are of course, situations where genuine contracting out or subcontracting can go on without their attracting the bargaining rights which may have been established in the main enterprise. On many occasions the term subcontracting and contracting out are used synonymously but they are not the same and the difference can be fundamental as to whether a sale has occurred under our Section 89. As is pointed out in the Reimer Express Lines Limited et al. 1984 CLLC, 14,308

> "for there to be a subcontract, there naturally has to be a primary contract. Where one party has contracted with another to produce a given result and it lets out part of its contract to others, the secondary contractors are commonly known as subcontractors. The classic example is found in the construction industry where general contractors, who have the overall control and responsibility for a project, subcontract some or all of its functions to independent entrepeneurs specializing in the particular field i.e. electrical, plumbing, millwright, etc. etc. Such subcontracts are usually won through a tendering system and the transactions are not considered to be a sale of business. In contrast where work is performed by employees for the purpose of one's own business and a decision is taken to have the work done by others who are not employees, that is contracting out which, in some circumstances, can constitute a sale of business under the code".

In this case it was argued by the companies that Marco Limited was the general contractor and that it in fact had subcontracted out all of the various phases of the construction of the Bonavista project. There is no question but that on August 9, 1983, Marco Limited did award a contract to Tri-City Construction Limited to provide labour to construct the foundations at the Bonavista project.

The evidence shows that on September 9, 1983, the Board had received the application for certification of employees of Tri-City Construction Limited. On September 19, 1983, Sherwood Construction Limited was incorporated. On October 7, 1983, as earlier indicated, four employees of the company were called together and were advised that they were to be laid off. They were advised at the same time by the company's supervisor, Mr. Arthur Pinsent, that they could go to work with Sherwood Construction Limited on Monday, October 10, 1983, if they signed a declaration that they were not members of any unions. The employees as we know refused, and the request was withdrawn, but all employees except Junior Keel did go to work on Monday, the 10th. In the meantime on October 5, 1983, a letter had been sent by Marco Limited to Sherwood Construction Limited advising that company, that its price of $20,000. to provide labour to complete roof blocking and interior finishes had been accepted.

Our Act does not, of course, have a section equivalent to Section 1(4) of the Ontario Labour Relations Act. There that Section says

> "Where in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any persons, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

However, even though we do not have the equivalent section, as a Board we cannot ignore that the three companies here all have common directors and shareholders. Thomas Hickman, Margaret Hickman, and David Martin are all directors and shareholders of all three companies. The appropriate share lists were placed in evidence. Consequently, while the Board cannot obviously by legislative authority regard all three companies as constituting one employer, the inference has to be clear and unmistakable that all three individuals control the same three companies. This is not the same element of contracting out as referred to in the Reimer Case to "independent entrepeneurs". If that same contract had gone to a completely separate corporate entity with absolutely no connection with Marco Limited the inference would not have been so overwhelming.

The fact that work previously done by Tri-City Construction Limited is now being done by Sherwood Construction Limited, although not conclusive, is significant. That this labour work originally being done by Tri-City Construction Limited, to complete the foundations is now on Monday, being done by Sherwood Construction Limited is worthy of note. Here Tri-City employees and foremen did exactly the same work on the same site with the same equipment with the same supervisor. It is difficult to resist the conclusion that there has been a transfer, or other disposition of a business or part thereof.

While this Board does not feel that on balance, the employer was guilty of any unfair labour practice, it is not in our opinion inappropriate to point out that the incorporation of Sherwood Construction Limited did occur after the application for certification was made. It may be of course, pure coincidence since the records show that the official notification was not received by the company until September 23, 1983. One of the principles of all three companies stated that he wished to operate non-union or that he could not compete with non-union companies. This rethinking of the economic realities of union vs. non-union is alluded to in Westinghouse Canada Limited (1980) 2 Canadian LRBR 469 application for judicial review dismissed 80 CLLC 14,062 where on p. 497 the Ontario Board mused:

> "Can an employer faced with economic difficulties caused by collective bargaining-related factors (wages, benefits, seniority, work practices, etc.) act to remove himself from his collective bargaining

> relationship? It may well be that it is more profitable to operate without a union than with one but if an employer can react to this reality simply by moving his business, the right of employees to engage in collective bargaining would be seriously undermined. What if the employer who is faced with an economic crisis caused by collective bargaining related factors, seeks relief from the union and is met with an unsympathetic or unsatisfactory response? Assuming that these factors could be established, the answer if by no means clear".

Here, of course, there was no "seeking of relief". The employer unequivocally stated his position that he wished to have a non-union company. To infer from that assertion that a union company would have equal or less economic obligations would, of course, be naive. The obvious inference is that the employer wished to operate Sherwood Construction Limited without the restraints imposed by either a certification order or a collective agreement. As a matter of fact, it is not an inference. The evidence clearly shows this to be the position that the employer had adopted and it was defended at the hearing.

Having said this, however, we pointed out that "where the employer, without any opposition to the right of employees to engage in collective bargaining simply tries to cut cost, we do not think that it can fairly be said that the employer is motivated by anti-union animus. On that assumption, although contracting out does in a very real sense deprive employees of this right to be represented by a bargaining agent, it must be balanced against the legitimate economic interests of employers" see, Reimer Express Lines Limited (supra). Nevertheless, the employer while maintaining his right to protect his economic interest and although not motivated by anti-union animus may still find that its actions are caught in the legislative net of Section 89 as amended and that a certification order may extend to the new or recently incorporated economic entity.

The general language used in our Section 89 as amended to include "or otherwise dispose of" has been liberally interpreted by this board. Similar or identical language has attracted the same fairly broad interpretation. See Radio CJYQ Limited (1978) 26 di 576 and (1978) 1 Canadian LRBR 568 and Thorco Manufacturing Limited 65 CLLC 16,052. In Thorco (supra) the Board stated in part

> "having regard to the particular language used and the remedial object sought to be attained by and the wide meaning which must be attributed to the preceding word transfers, it is our opinion that the generality of the words any other manner of disposition is not intended to be in any way limited by or interpreted ejusdem generis with the words leases or transfers. In our opinion, it is more in harmony with the language of and the remedy envisaged by the enactment to interpret the words and any other manner of disposition as an omnibus or saving provision intended to include disposition of the business or part or parts thereof by any mode or means whatever which are not appropriately described by the preceding words which state that sells include leases or transfers".

Labour Relations Boards in Canada have generally required that there be some "nexus" between the former employer or business enterprise and the new one. In the instant case from a review of the evidence it is clear that Tri-City Construction Limited was carrying on the business of carpentry on Friday afternoon and that work had not in fact been completed. Granted the evidence was not precise as the amount of work remained to be done. It is, however, clear that during the following week the employees of Tri-City Construction Limited continued to do the same work as they had done before on the same project, under the same supervision with the only apparent change being that a new sign appeared on the site indicating that Sherwood Construction Limited was on site to do certain aspects of the job.

From the evidence it seems that the employees of Tri-City were never told that their employment was to extend to only a portion of the whole contract. Indeed, it was their evidence that they expected to be employed doing carpentry during the whole of the project. Indeed, Mr. Hickman himself could give no real explanation why the corporate entity of Tri-City Construction Limited could not have continued to do the labour for roof blocking and interior finishes. There was no evidence of any special expertise or knowledge peculiar to Sherwood Construction Limited which would require it to do the work. Also, in all of this, of course, one cannot ignore the climate in which all of this occurred. An application for certification had been made on September 7, 1984. On September 19, 1984, one of the principals of Marco and Tri-City Construction Limited incorporates Sherwood Construction Limited and then awards the labour contract for roofing and interior finishes to that company. Had there been no application for certification and had Marco Limited subcontracted out facets of the project, the necessary nexus or connection may of course, not be made. Here, however, in considering all of the evidence of the case, it is hard to escape the conclusion that the incorporation of Sherwood Construction Limited was an attempt to avoid the more onerous responsibilities of union contract. Indeed, Counsel for the employer said in argument "(he) was simply trying to protect himself and his company for contracts bid as a non-union contractor and did not want to be faced with a unionized situation when it had been on a non-union basis". It may all be a matter of timing but in our opinion, to have Sherwood Construction Limited carry out this work, albeit for a short period of time, together with the other factors present, constitutes a sufficient connection to allow for the continuation of bargaining rights to flow from Tri-City Construction to Sherwood Construction Limited on the Bonavista project.

For the above reasons the Board issued its order of 24 September, 1984.

ISSUED at St. John's this 8th day of January, 1985.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 2 Schedule "B"

IN THE MATTER OF
The Labour Relations Act, 1977

- and -

Edward Hollohan, Keith Shears,
Amador Decker and Kevin Sparkes,
("the employees")

- and -

Construction General Labourers',
Rock and Tunnel Workers, Local 1208,
("the union")

- and -

McNamara Construction Company, a
division of George Wimpy Canada
Limited, ("the company").

BEFORE: Gordon G. Easton, Q.C., Chairman
F.W. Russell and J. Walsh, Members

FOR THE APPLICANTS: R. Earle

FOR THE RESPONDENT: N. Whalen

FOR THE EMPLOYER: R. Whalen.

DECISION

This matter arises out of two applications received from the employees: - One application requesting the Board to revoke a certification order issued to the union on 31 August, 1970, and an application to terminate the bargaining rights of the union. At the outset of the hearing, it was agreed by counsel for the parties that the application to be considered as deciding the matter would be the application for the termination of the bargaining rights of the union. It was agreed that the bargaining rights of the union, although gained initially through the certification order of 31 August, 1970, had been expanded significantly through voluntary recognition.

The Board, by decision dated 17 September, 1985, directed that a vote be conducted.

The union's argument is two-fold in suggesting that the Board dismiss the application for termination of bargaining rights. It argues that this is an attempt by a rival union to raid its membership at a time when the Labour Relations Act does not permit such a raid. Secondly, the union argues that this is an attempt by the rival union, International Union of Operating Engineers, Local 904, ("Local 904"), to obtain representation through indirect means what it cannot obtain through certification because of time constraints and that Local 904 has initiated and supported the application.

The employer argues that the collective agreement in effect between it and the union was negotiated and acted upon in good faith and that the application for termination of bargaining rights is untimely.

The evidence before the Board reveals that the application was initiated by employees working on a job in the Gros Morne National Park. Although there is evidence that Mr. Derm Cain, President of Local 904, was involved in advising the employees, the Board is satisfied that the application was initiated by Mr. Edward Hollohan. It appears that Mr. Hollohan and some of his co-workers were dissatisfied with the representation being provided by the union, and this became apparent following a meeting held at the Ocean View Hotel in Rocky Harbour on 12 April, 1985.

Prior to this meeting, the union had met with the company, Lundrigan's Construction Ltd. and Viking Construction Ltd., and agreed to some concession on wages in some areas and a wage freeze for employees working at the Gros Morne job. The meeting in Rocky Harbour followed meetings in St. John's and Corner Brook held to ratify the amendments to the collective agreement. At that meeting, Mr. Herb Knee of the union appeared to encounter a hostile audience. After some discussion on the problems related to releasing the count of ballots taken at St. John's and Corner Brook, a vote on the concessions was held. Mr. Hollohan and some of his supporters appeared to be very upset at the way the meeting was run, and it seems that following the meeting, their efforts to get rid of the union intensified. A petition was started and Hollohan made arrangements to have Mr. Derm Cain of Local 904 meet with the men employed on the Gros Morne job. Following that meeting, the applications were made to the Board, including an application for certification filed by Local 904. After receipt of the application, Mr. Herb Knee and Mr. Frank Joy of the union went to Rocky Harbour to hold a meeting with the men. This meeting again ended in a shouting match between Messrs. Joy and Knee and the group of employees led by Mr. Hollohan. The union contends that it was the employees' aim from the start to disrupt the meeting. Apparently, the original purpose of the meeting was to elect a shop steward. This was not accomplished, and the job, as at the date of the Board hearing, did not have a shop steward.

There was considerable evidence presented by the union on its role in representing the employees. Evidence was led suggesting that there were few complaints received by the union representative, Herb Knee, and any problems brought to his attention were dealt with promptly. This evidence was, in many cases, directly opposite to evidence of some of the supporters of the application before the Board. The effect of the quality of representation provided by the union will be dealt with later.

This application is made pursuant to Section 51(1)(b) of the Act which provides:-

> Where, following investigation, and after a hearing if requested by the party concerned, it is determined by the Board that a bargaining agent no longer represents a majority of employees in the unit for which it was certified or for which it acts as bargaining agent, the Board on its own motion or on application may

> (b) if the bargaining agent was not certified, terminate the bargaining rights of the bargaining agent by a declaration in writing;
>
> and thereupon, and notwithstanding anything to the contrary in this Act, an employer shall not be required to bargain collectively with the bargaining agent.

This section provides that where a bargaining agent no longer represents a majority of the employees in the unit, the Board may terminate the bargaining rights. This section obviously gives the Board a discretion whether to terminate bargaining rights when an application is received. Counsel for the union argues that this is a case where the Board's discretion should be exercised and the application denied. As referred to earlier, Counsel contends that this is a raid situation by a rival union trying to accomplish through the "back door" what it is unable to accomplish through certification because of the time bar in Section 36(4) of the Act.

The B.C. Labour Relations Board in Downie Street Sawmills Ltd., 2 CLRBR (NS) p. 193 outlined several areas where it would exercise its discretion and refuse to grant a revocation application. One of the areas discussed is the "back door" approach.

In the case presently before this Board, there is no evidence to suggest that the application for termination of bargaining rights was initiated by Local 904. There is evidence that some of the employees had been for some time disgruntled with the union although their discontent may not have been forcefully placed before the union representatives, and from the employees' evidence, this was due to the unavailability of the union representatives, a fact totally denied by the union.

It is admitted by Counsel for the employees that Derm Cain of Local 904 provided considerable assistance to the employees spear heading the drive to get rid of the union. The involvement of Local 904 is further evidenced by the fact that an application for certification was filed simultaneously with the applications for termination filed by the employees. However, in this case the Board is satisfied that the application for termination was in fact initiated by the employees, and there was no evidence adduced to refute this conclusion.

The Board takes the position that the employees should be free to choose the representative of their choice subject to the constraints outlined by the B.C. Board in Downie Street Sawmills Ltd., supra. For the above reasons, the Board directed that a representation vote be conducted.

The Company argued that it had negotiated an agreement in good faith and that the application for termination of the union's bargaining rights was untimely. Section 52 of the Act sets out when an application may be made to the Board:

> "The Board is not required to accept or deal with any application to revoke the certification of a bargaining agent under section 51
>
> (a) within the period of twelve months immediately following the date of the certification of that bargaining agent.
>
> (b) within the period of six months immediately following the date when a previous application to revoke certification of that bargaining agent was refused, if a previous application was made; or
>
> (c) within the period of twelve months immediately following the date when that bargaining agent by notice required an employer to commence collective bargaining, if such notice was given".

This section does not appear to bar the present application. A strict reading of the Section restricts the applicability of the Section to applications for revocation of certification. There is merit in the company's argument in that Industrial Peace would hardly be served if employees could, subject to the constraints of Section 52, terminate bargaining rights thereupon terminating the collective agreement. This is obviously not a desirable situation, and some jurisdictions have passed legislation that corrects this problem. Applications for termination or revocation are subject to the same constraints as applications for certification when a collective agreement is in effect. In this jurisdiction, no such legislation exists. Also, in this situation a termination, if in fact it is granted, will not be disastrously disruptive to the company since the current collective agreement expires in March of 1986, and most, if not all, of the project is already completed.

The Board ordered vote will be conducted and the appropriate Board order issued.

Dated at St. John's this 22nd day of October, 1985.

For the Board,

GORDON EASTON, Q.C.
Chairman

Appendix 3 Schedule "B"

IN THE MATTER OF
The Labour Relations Act, 1977

- and -

Transport and Allied Workers,
Local 855 affiliated with the
International Brotherhood of
Teamsters, Chauffeurs, Warehousemen and Helpers of America,

- and -

Offshore Personnel Limited,

- and -

Harvey Offshore Services Limited,
St. John's.

BEFORE: Gordon G. Easton, Q.C., Chairman; W. Alcock and J. Walsh, Members.

FOR THE APPLICANT: R. Earle

FOR THE RESPONDENT: N. Whalen

FOR THE INTERVENOR: J. Roil

REASONS FOR DECISION

This is an application pursuant to Section 89 of the Act received from Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America alleging that there has been a sale within the meaning of the Act between Harvey Offshore Services Limited, St. John's, and Offshore Personnel Limited. As a result of the sale, the applicant contends that Offshore Personnel Limited is bound by the certification order and collective agreement in effect between Harvey Offshore Services Limited, St. John's and Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

In the instant case the union, of course, is arguing that Section 89 of our Act, as amended, should apply and that the respondent company is bound by the collective agreement referred to earlier. Here by letter dated April 2, 1984, the intervenor notified the union "It is the intention of this Company after May 30, 1984, not to supply directly labour and/or employees to the tenants of Harvey's Industrial Estates". Mr. MacKenzie, the manager of Industrial Relations for the Intervenor stated, the decision had been made around April of 1984 that "we were getting out of the labour field". Mr. Al Murray who was the Intervenor's Operations Manager was on holidays at the time. A letter had been written dated May 15, 1984, to Frontier Offshore Limited and Edison Offshore Consultants Limited which as stated earlier confirmed that "(the Intervenor) is intending to contract out its yard labour at Harvey Industrial Estates". The letter wished to elicit a response whether these firms would be interested in submitting a proposal "to supply such labour as may be required to fulfill our clients requirements in the yard". On May 14, 1984, Mr. Murray wrote to the Intervenor a letter which read as follows:

> I have been given to understand that you intend, in the very near future, to invite Labour Contract tenders for Harvey's Torbay Road Yard. You, of course, know that I will be retiring as the Company's Operations Manager this summer. In that connection I would appreciate a meeting, at your convenience, to discuss the possibility of tendering on the contract and to determine if it in any way conflicts with the company's policy of mandatory retirement at age 65.
>
> I know that my experience in this field would allow me to provide expert supervision. I have engaged the services of an Accountant to work out cost details for me and I believe that I could competitively bid for the contract.
>
> I would appreciate it if we could discuss this in the very near future.

On May 24, 1984, he submitted a proposal to the Intervenor which read as follows:

> Would you please consider the following proposal to provide labour services for your Torbay Road Yard.

> We will incorporate a company to be known as Offshore Personnel Limited.
>
> Our company will charge you a flat monthly fee of $5,200. and;
>
> Provide labour service at our cost of $9.00 per hour.
>
> Should our labour force be required to work overtime that service will be provided during the normal work week at the rate of $13.50 per hour and $18.00 per hour on Sunday.
>
> We understand that the labour service required will be of a general nature and not include tradesmen.
>
> Included in our monthly fee is the services of a foreman and security personnel based on 40 hours per week. If this man is required to work overtime, his rate will be $14.25 per hour at time and one-half or $19.00 at double time.

On May 17, 1984, Mr. Murray had caused the Respondent Company to be incorporated. He is the majority shareholder. The proposal made by Mr. Murray was considered by the Intervenor and as Mr. MacKenzie stated in his evidence "knowing Mr. Murray, we felt we could not go wrong". On the 6th of June, 1984, Offshore Personnel Limited and Harvey's Offshore Services Limited entered into a formal agreement whereby the parties agreed that for a term of one year from June 1, 1984, the contractor (respondent) would provide all of the personnel outlined in Schedule "A" .... required to perform duties relating to materials handling, rigging, slinging, forklift operations, loading and unloading of trucks, containers and related activities of the Client's premises (Intervenor) located at Harvey's Industrial Estates, St. John's. The consideration to be paid for this was also set out. Schedule "A" defines the personnel as being foremen as required, general labourers as required, and further set out "personnel would be supplied on a full time or part-time basis as may be required by the client from time to time". On June 1, 1984, the respondent commenced to carry out the services indicated in the contract.

The respondent and the Intervenor were essentially arguing here that there has been no sale, transfer, lease or other disposition of a business or part of a business, and that what in fact we have here is a contracting out of a certain aspect of a company's operations. It is arguing that for there to be an application of Section 89 there must be two conditions satisfied. (1) there must be the transfer of a self sufficient entity and (2) there must be a transfer of more than just work. Here it is claimed that there has been no significant part of the larger business transferred, and that the Harvey group of companies has retained all of the essential elements of the business and has not divested itself of anything which would bring Section 89 into place.

Brochures put into evidence by one of the parties indicates that Harvey's Offshore Services Limited offers a wide range of services, goods and commodities. It talks of having "complete offshore based facilities, crewing and logistic services, full range of offshore supplies, bonded warehousing and pipe storage". Its supply base covers "13 acres of bonded and lighted waterfront property and can provide inter alia cranes, forklifts, front end loaders, warehousing, office space or onsite security and 24-hour day, 365 days a year services". The brochure points out that the Intervenor "offers to the offshore oil industry the most comprehensive range of support service supplies to be found under any single umbrella on Canada's east coast". In its well prepared pitch for clients, it alludes to support and/or ancillary services which can be supplied by presumably related Harvey Companies such as Avalon Customers Brokers Limited, Harvey's Travel Agency Limited, and Sanicare Limited which provides containerized waste management services. In short, Harvey's Offshore Services Limited either directly provides or can indirectly provide a wide range of services and supplies to clients interested primarily in the Offshore Oil Development. It is of course, evident that the interest of the company is not limited to those clients, but extends to any persons or corporations who wish to avail of its many services and facilities.

Harvey's Industrial Estates located 3.1 miles from the waterfront has 78 acres of storage space, 28 acres of which are fully developed, bonded, fenced and lighted. Also it offers 48,000 ft^2 of modern warehouse space.

One of the services offered by the Intervenor to Cantera and Petro Canada was the providing of yard labour, as it was called at Harvey Industrial Estates, to tenants of the estates. Pipes used by the companies in their offshore operations are of course, owed by these companies, but are stored in space leased to the companies by Harvey Industrial Estates. Up to April of 1984, the Intervenor was supplying the labour necessary to handle, load and unload these pipes and other materials in the yard of Harvey Industrial Estates. As Mr. McKenzie testified, however, some of the clients were complaining about the cost of labour. The Intervenor then decided to discontinue the providing of labour to the various clients and sent out the notices that are mentioned earlier. These of course, led to the proposal made by Mr. Murray and to the eventual contract of June 6, 1984. Here it has been argued that what has taken place is a contracting out of a certain element of a business or operation.

Counsel brought to the attention of the Board a recent decision of the Canada Labour Relations Board dated May 18, 1984. Reiner Express Lines Limited et al 84 CLLC. 16,036.

> A trucking company decided to contract out its truck wash and tire repair operations. The company entered into an agreement with another company under which the trucking company leased part of its premises to the other company and the other company supplied its own employees. The union filed a complaint alleging that the contracting out amounted to an unfair labour practice. The union also sought a declaration of successor rights.
>
> The complaint was dismissed and the declaration granted. The decision to contract out was made for valid business reasons without anti-union animus and thus was not an unfair labour practice. However, with respect to successor rights, the Board held that the contracting out amounted to a sale of part of a business.

> *The premises, equipment, and supplies were leased* and the work transferred from one company to the other. The necessary *nexus* between the two companies was established.

Counsel brought the case to the Board's attention as he felt it indicated that the Canada Board was being somewhat reflective on its decision in Quebec Sol Services Limited (1981) 45 DI, 233 and Newfoundland Steamship Services (1981) 45 DI, 156. The notion that a certification order grants to a trade union proprietary rights over the work functions performed by employees in the bargaining unit was extensively canvassed in Freight Emergency Services Ltd., et al., 84 CLLC 16,031. It quoted from Finley Forset Industries Ltd., 3 CLRBR No. 12 81 pages 324-5 and 14,343.

> "Certification does not grant the union the exclusive jurisdiction over the *work* performed by the employees in the unit. The certification only grants the exclusive right to the union to represent the *employee*".

The Board in Freight Emergency Services (Supra) seemed to support the notion "when the issue is viewed in the context of successor rights, the very wording (of the section) seemed to support the emphasis on the employees and the collective agreement *rather* than the work". It goes on to say

> "We are unable to make the same fusion of bargaining rights to *proprietary rights over work functions* that our colleagues do. It naturally flows that we cannot attach the same permanence to bargaining rights of a trade union that would guarantee their survival no matter whose employees perform the work or how their employer came by the work".

The Board in Freight Emergency Services went on to find "successor rights were never intended to apply to *genuine* circumstances of subcontracting, a loss of business to a competitor to where there is a corporate dissolution" (our underlining). It harkens back to and approves what was emphasized in the Terminus Maritime Inc. case 84 CLLC 16,209.

> "But continuity of the work done is not sufficient alone to satisfy Section 144. There must be some nexus between two employers other than the fact that one employed persons to do certain work that the other now does or will do, before one can be declared to be the successor of the other. Otherwise, a loss of business to a competitor employer would result in a successorship. There must be some continuity in the employing enterprise for which a union holds bargaining rights as well as continuity in the nature of the work".

It is essential, we think, to point out that the differences between the Freight Emergency Services Ltd. case and the instance one are startlingly obvious. In that case Freight Emergency Services Ltd. went bankrupt. The former employee of the bankrupt company incorporated a new company and began to operate under contract to a transport company which had had a contract with Freight Emergency Services Ltd. The Board pointed out that when Freight Emergency Services Ltd. lost its contract with Central Transport Inc. "that was the end of Freight Emergency Services for the purpose of Section 144 of the code. It was no longer an entity that could be sold in any shape or form as a going concern" (14,273). Also, the Board noted that "there is nothing in the evidence that would support the existance of an understanding between the two". The Board further rejected that the newly incorporated company (CTX) was a revitalized F.E.S. "and the fact that some managerial persons, dispatchers, and clerks who were not part of the Teamsters bargaining unit at F.E.S. took up employment with the new company, is not persuasive that there has been a transfer of any of the business" (14,272) (our underlining).

In the Reimer case (Supra) the Board decided that the so called contracting out amounted to a sale of part of a business. There as the headnote stated "the premises, equipment and supplies were leased and the work transferred from one company to the other. The necessary nexus between the two companies was established". On page 14,316 the Board goes through some pains to distinguish between "subcontracting and "contracting out". It says that

> "both terms are often used interchangably but they are not synonymous and the difference can be fundamental in the determination of whether a sale has occurred under Section 144. For there to be a subcontract, there naturally has to be a primary contract. Where one party has contracted with another to produce a given result and it lets out parts of its contract to others, the secondary contractors are commonly known as subcontractors. The classic example is found in the construction industry where general contractors, who have the overall control and responsibility for a project, subcontract some or all of the functions to independent entrepeneurs specializing in the particular field, i.e. electrical, plumbing, millwork, etc. Such contracts are usually won through a tendering system and the transactions are not considered to be a sale of a business. In contrast, where work is performed by employees for the purpose of one's own business and a decision is taken to have the work done by others who are not employees, that is contracting out which in some circumstances can constitute a sale of business under the code"(our underlining).

In Raymond Cote, 1968, OLRB, reported March 1211 the Board commented:

> "The meaning to be attached to the work "business" depends to a great extent on the facts and circumstances in each particular case. It cannot be said that any one facet of an enterprise taken by itself necessarily comprises a business. It has been expressed that a business is "the totality of the undertaking". The physical assets of buildings, tools, and equipment used in a business are not necessarily the undertaking per se but are, along with management and operating personnel and their skills, necessary in the operations to fulfill the obligations undertaken with a hope of producing profit to assume its success. The total of these things along with certain intangibles such as goodwill constitute a business.
>
> While one usually thinks of a business as a profit-making economic activity, the term "business" in The Labour Relations Act cannot be so restricted. The Act also applies to municipalities, public libraries, universities, school boards, hospitals, and other non-profit service undertakings which have employees and engage in collective bargaining. The economic activities of these entities are of an entirely different character from those of commercial enterprises, yet the definition of "business" must be

> broad enough to include them. Even a wholly commercial enterprise will consist of many elements, some of which will be integral, and others merely incidental, to the total undertaking. And, in the case of undertakings in the service sector, "know how", managerial systems and other intangibles are likely to be more important factors in the overall organization than particular physical plant and equipment.
>
> A business is a combination of physical assets and human initiative. In a sense, it is more than the sum of its parts. It is a dynamic activity, a "going concern", something which is carried on. A business is an organization about which one has a sense of life, movement and vigour. It is for this reason that one can meaningfully ascribe organic qualities to it. However, intangible this dynamic quality, it is what distinguishes a "business" from an idle collection of assets".

In Kenmir v. Frizzell et al. 1968 All English Reports 414 at 418 Widjery J. took the " Dynamic" approach in his consideration of whether a transaction amounts to a transfer of a business.

> "... Regard must be had to its substance rather than its form, and consideration must be given to the whole of the circumstances, weighing the factors which point in one direction against those which point in another. In the end, the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern, the activities of which he would carry on without interruption (our underlining). Many factors may be relevant to this decision though a few will be conclusive in themselves. Thus, if the new employer carries on business in the same manner as before, this will point to the existance of a transfer, but the converse is not necessarily true, because a transfer may be complete even though the transferee does not choose to avail himself of all the rights which he acquires thereunder. Similarly, an express assignment of goodwill is strong evidence of a transfer of the business, but the absence of such an assignment is not conclusive if the transferee has effectively deprived himself of the power to compete. The absence of an assignment of premises, stock-in-trade or outstanding contracts will likewise not be conclusive, if the particular circumstnaces of the transferee nevertheless enable him to carry on substantially the same business as before".

The Canada Board in the Reimer case adopted the same approach as Widjery J. took and concentrated on the substance rather than the form and stressed the importance of considering the transaction in its totality. The Canada Board in Reimer Express Lines Limited (supra) states:

> The Board agrees with this approach to defining a business. A business is not really the sum total of its work functions. It must be viewed in its totality. This "Dynamic" interpretation which takes into account the evolution of the business and its purpose, leaves room for consideration of its individuality and its particular characteristics which may undergo change, depending on the economic climate. With this interpretation, one can also distinguish more readily between a "sale" under Section 144, subcontract or the loss of a contract to a competitor.

The Ontario Board in the Kennedy Lodge Inc. case draws a comparison between the "core functions" and "peripheral functions" of an employer in deciding whether there has been a bonafide subcontracting situation. In this case the Ontario Board concluded that the hands-on nursing care amounted to the contracting of a "core function" and hence the employer could not avoid the obligations of the collective agreement.

In the case presently before the Board, there is little doubt that Harvey Offshore Services Limited divested itself of a "core function" when the labour part of its operations was assumed by Offshore Personnel Limited. There may be situations where an employer is able to subcontract a part of its business and not be subject to the provisions of the Act. However, in this case the contracting out of the labour part of its offshore operation constitutes the contracting of a "core function" as opposed to a "peripheral function".

Our own Board along with among others the Canada Board and the Ontario Board, has opted for a fairly liberal interpretation of words such as "sell", "transfer", "lease", or "otherwise disposed of". See Thorco Manufacturing Ltd. 65 CLLC 16,052; A.J. Coleman and Sons Limited (unreported); Radio CJYQ Ltd. (168) 21

DI 576 and (1978) 1 CAN LRBR 565. And, of course, as was pointed out in Radio CJYQ (supra) "a key to the protecting of bargaining rights must be whether there is a continuity in the nature of the work done (i.e. in classifications or job content for which the union was certified) not in the actual persons who perform it".

In the Reimer case, in coming to the conclusion that the necessary nexus between the two companies had been established, the Board used phrases such as Bernshine (the successor) drew its life from Reimer's business;"Arthur Bernshine acquired his know-how working for Reimer" and "the whole point of the exercise was to have Bernshine established in business by taking over Reimer's truck wash and tire repair operations as a going concern" (our underlining).

We cannot ignore some of the very valid criteria that has been adopted by Boards over the years in determining whether there has been a sale, transfer, lease, or other disposition of a business. We feel that the criteria adopted by the Canada Board has been a stabilizing factor in labour management relations in this Province since the applicable provisions in the code and in our statute are very similar if not identical. The criteria developed over the years is certainly persuasive, and it would be if nothing else, inconsistent for this Board to go on a frolic of its own. We believe that we have achieved a certain consistency in our approach to Section 89 applications, and we would now like to apply what we considered to be the determinative factors in the particular factual situation which we have here.

We hope it is clear at the outset, that we feel that there are situations when genuine contracting out can go on without attracting the bargaining rights which may have been established through the main enterprise. As the Canada Board pointed out in Reimer (supra) "bargaining rights do not just follow anything, they follow the sale of a business". In using the word "sale" of course, it includes "lease, transfer, or other disposition" and the general language is liberally interpreted. However, each case must be examined to determine whether overall there has been some times an almost indefinable nexus which holds the transactions together and sustains the collective bargaining process. As boards have repeatedly stated over the years, it is the substance and not the form of the transaction which must be looked at in our attempt to decide its true nature. In these cases the economic considerations are considerable, and there may well be bonafide transactions which have no anti-union animus to somehow taint it, but there is nevertheless an attraction of bargaining rights. It is necessary then to review the real nature of the transaction.

Here Harvey's Offshore Services Ltd. provides a myriad of services and supplies. The company rightfully prides itself on being in the vanguard of those who provide the blossoming Offshore oil industry with its requirements. In order to lease its facilities in Harvey Industrial Estates, the company considered it attractive not only to provide the land and certain supplies, but also the labour required to round out or complement the whole range of services. Up to April of 1984, the company was providing among other services, labour and/or employees in its yard for which the clients paid a fee. From the evidence of Mr. MacKenzie, it appears that some clients were complaining about the cost of labour being supplied by Harvey's Offshore Limited and around March or April, 1984, the decision was made that the company would no longer directly provide those services but would ask independent persons or companies to indicate if "they would be interested in submitting a proposal to supply such labour (yard labour) as may be required to fulfill our clients requirements at the yard". Letters went out to Frontier Offshore Ltd. and Edison Offshore Consulting Ltd.

In the meantime, Mr. Al Murray was due to take mandatory retirement from Harvey Offshore Ltd. after years of service. His retirement date was set for August 31, 1984. However, from the evidence it is clear that he did not wish to be put out to pasture. He wanted to get involved in some enterprise in which he could use the knowledge and expertise which he had acquired over the years

He talked with Mr. MacKenzie about the situation and became aware that the company was going to subcontract out its labour requirements. He asked the company if they would consider dealing with him. Meetings were held between them and on May 24, 1984, he sent the company the letter which we quoted earlier in this decision.

Mr. MacKenzie testified that having examined the proposals made by Mr. Murray, they felt they could not go wrong with him. In the meantime, Mr. Murray had incorporated his company known as Offshore Personnel Ltd. A formal contract was entered into on June 6, 1984. A man by the name of Crocker had been the part-time foreman on the job and he was responsible for the hiring of the labour to provide the various services. He was hired full-time by Offshore Personnel Ltd. From the evidence it does not appear that there was any interruption in the providing of labour services to the various companies. Murray testified that Crocker, who was familiar with the manpower requirements and its accessability, hires all of the persons who provide labour for the contract. Apparently, he gives no direction to Crocker as to whom he should hire. The contract with Harvey Offshore Ltd. is his only contract, although he testified that he is actively pursuing the providing of labour requirements to other companies.

From a practical point of view, it appears that when an oil company requires certain pipes on the waterfront or elsewhere Harvey's Offshore Services Ltd. supervisor would call Crocker who would see to it that their needs were met. If for any reason, Crocker could not be located, Murray would be called and he would attend to it.

An examination of the contract entered into between the two companies indicates that Harvey Offshore Ltd. has agreed to honour, upon presentation, weekly invoices from Offshore Personnel Ltd. Indeed it seemed clear from the evidence that Harvey's was extremely prompt in paying Offshore for services rendered. It is as well that this is so since Offshore is completely dependent upon Harvey's for its income. It has no other clients from whom it can derive any revenue. It should be noted that Mr. Murray who is the owner/ president of Offshore essentially operates from his home, but there is a lunchgoom/changeroom facility in the yard that is now and was formerly used by the labourers and the foreman.

Harvey's has maintained and this is confirmed by Offshore, that it did not sell any assets of any part to Offshore. There was no sale or lease of equipment, or of goodwill, accounts receivable, etc. Did the company however, dispose of "(his) business or the operations or any part of them" in such a manner as to attract the provisions of Section 89 of our Act as amended?

Harvey's obviously did not want to continue to directly supply labour and/or employees to the tenants. To that end, it divested itself of that business as Mr. MacKenzie himself said. We must not forget that it was essential for Harvey's to be assured that if it no longer provided labour requirements someone had to do it. Obviously, it could not just be anyone. Harvey's had a primary obligation to its clients to make sure that all of their requirements were met. It is only reasonable to assume that Harvey's would be interested in screening the persons or the companies who would be interested in providing the labour requirements. In the case of Murray they had all the information they needed at their finger tips to make an assessment and a final decision. It is not without significance that Mr. MacKenzie said "we knew we could not go wrong with Murray". It is also we think significant that Mr. Murray took early retirement, formed his company and made his proposal to Harvey's. It is almost impossible not to speculate on whether he would have taken early retirement if he knew he was not going to get the contract. That is not to say that he would not have incorporated a company later to do the same thing. We are not inferring that there was anything sinister or nefarious about this transaction. There was quite simply a good opportunity there which any knowledgeable person would not want to pass up.

One of the vital considerations that was examined by Widjery J. Kemar V. Versal (supra) and in Reimer case (supra) was whether the transferee has acquired from the transferor a "functional-economical vehicle". There seems little doubt that here it did. The very essence of the functional-economical vehicle (Offshore) is labour. That is what it is all about. There were no assets to transfer. The employees for whom the union held bargaining rights performed those services (labour) in Harvey Industrial Estates yard. While there was no building as such turned over to anyone they continued to use the lunchroom/changeroom as they had in the past. The same foreman who called them before to come to work called them now. They performed the same services as they had in the past. The whole method of operation remained the same. The only noticeable difference is the fact that Mr. Murray no longer occupies an office with Harvey's. He has his office in his home. When the supervisor at Harvey's now needs labour, he calls or deals with the same person he dealt with before. The only clerical or administrative difference appears to be that now Harvey's issues one cheque to Offshore Personnel Ltd. for labour whereas previously the employees received individual cheques from Harvey's. One of Harvey's former employees testified that nothing has changed. He is called in now by Crocker as he was before. He used the same equipment in the same yard doing the same work. Indeed, as he says "I was there a couple of days before I found out I was with Offshore".

Section 89 applications are rarely clear cut. There will always be subtle and some not so subtle differences. It is the overall circumstances we must examine in viewing the totality of the transaction. The fact there was no interruption in the providing of services is important. The fact that the same expertise that was used before to provide those services being used now is significant. Harvey's divesting itself of the obligation to provide labour and/or employees at a time when its experienced operations manager was about to retire, in itself attracts an inference. Harvey's knew that Mr. Murray was not about to sit around "twiddling his thumbs". He wanted to remain active and involved in the very type of business to which he had devoted his working life. The time was opportune and the necessary ingredients were in place. We do not for one moment suggest that the company conspired to avoid bargaining unit responsibilities. Offshore may have been innocently caught by the provisions of the Act. There does not have to be any anti-union animus present to assist in the preservation of bargaining rights. Certainly, there was no evidence of any here. The facts seem, however, to support the conclusion that the necessary nexus has been established. We think that here there is a continuity talked about in the Terminus Maritime case both in the employing enterprise and in the nature of the work. The application must succeed.

The appropriate order will be issued.

ISSUED at St. John's this 31st day of January, 1985.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 4 Schedule "B"

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

United Brotherhood of Carpenters
and Joiners of America, Local 579
("the union"),

- and -

Pinsent Construction Limited
("Pinsent"),

- and -

N. & L. Construction Limited
("N. & L.")

BEFORE: Gordon G. Easton, Q.C., Chairman
G. McDonald and J. Walsh, Members

FOR THE APPLICANT: E. Shortall

FOR THE RESPONDENTS: C. Thompson

REASONS FOR DECISION

This is an application pursuant to Section 89 of The Labour Relations Act, 1977, received from United Brotherhood of Carpenters and Joiners of America, Local 579, alleging a sale, etc., between Pinsent Construction Limited and N. & L. Construction Limited.

The evidence before the Board reveals that Pinsent is a well-established company operating in the construction industry for many years. The evidence also shows that the union has represented carpenters employed by the company. Pinsent also accepted the terms of the collective agreement in effect between the union and the Newfoundland Construction Labour Relations Association and for jobs Pinsent is currently involved in, it continues to do so.

Mr. Whalen, Projects Manager for N. & L., and a shareholder of Pinsent freely admits that N. & L. was formed to try to obtain work as a non-union company. He contends it is a matter of survival since unionized companies find it difficult to compete. The solicitor for N. & L. openly advised that N. & L. was incorporated to get around the union's collective agreement and operate what is known in the industry as a "double-breasted" company. In this case the shareholders are exactly the same except Perry Tulk is Secretary-Treasurer of N. & L., whereas John Whalen is Secretary-Treasurer of Pinsent. Both companies operate from the same location, use the same office staff, etc.

Evidence also shows that the number of jobs performed by Pinsent in 1984 was significantly less than jobs performed by N. & L. in number and dollar value.

The union argues that in effect Pinsent has transferred a part of its business to N. & L. and consequently, should be bound by the collective agreement.

In this case N. & L. either purchased some of Pinsent's equipment or leased a considerable part of it. The evidence also revealed that N. & L. is involved in similar work and uses the same management personnel and for the most part the same employees who had formerly worked for Pinsent.

It has been argued that our Section 89 simply was not designed or drafted to encompass situations such as we have here. It has been argued that if the Legislature intended Section 89 to cover this particular set of facts or this "economic reality" if you will, then, it would have said so precisely. Or, the Legislature would have enacted a section similar to Section 1(4) of the Ontario Labour Relations Act. With respect, we disagree. In our opinion it is simply not necessary. The Legislature, both in the original enactment of The Labour Relations Act and in the recent amendment, sets out clearly that if an employer sells, leases, transfers, or otherwise disposes of his business or part thereof .... then, the acquiring party is bound by the collective agreement or the certification as the case may be. What other words or phrases would be required to be added? One could argue that the Legislature could have added the word "causes" to be sold, transferred, etc. But surely this is not necessary. If the Legislature intended to cover "sold" and "transferred" and "otherwise disposed of" situations, or the "agrees to" situations, then, it most assuredly in our opinion, intended to cover situations where the employer, or the controlling force behind, in this case, the corporate employer, causes the same result to be achieved. The end result is the same. The business or the major portion thereof, that was once carried on by one corporate entity is now essentially, for all intents and purposes, carried on by another.

It has also been argued that there is no "nexus" between the two continuing entities whereby the Board can find that there is the "continum" necessary to find that Section 89 applies. Here, not only is there the physical or tangible evidence of transfer of assets "equipment", etc., use of same employees, use of same premises, use of same expertise, but there is the almost osmosis like acquisition by N. & L. of all of the intangible elements of Pinsent which, in a more favourable economic climate, made itself successful. We have only to look at the huge difference between the small bit of work carried on by Pinsent in 1984 and the large contracts won by N. & L. in 1984, to draw that inevitable conclusion. What made Pinsent successful is now making N. & L. successful even in these troubled times. To barefacedly claim that this success is solely due to being able to operate "non-union" is, in our opinion, to fly squarely in the face of the spirit and intent of The Labour Relations Act.

In re Rivard Mechanical (1981) OLRB reported May 550 it is commented that "the first point to be commented on, in the facts is the extent of the emphasis placed by the respondent on the fact that what occurred here arose solely as a matter of economic survival" "While the Board is not insensitive to such problems, it must be stated unequivocally that The Labour Relations Act, nevertheless, does not contemplate or permit the unilateral withdrawal by one party from its obligations under the Act, or the achievement of this end simply by choosing to carry on the same business in a different form". Counsel for Rivard Mechanical argues that there is no intent to interfere with the union but economic realities require that they must maintain a non-union operation.

Clearly, nothing is more fundamentally destructive of a union's rights and interests than operation non-union, and "economic realities" simply cannot be used to justify this.

Numerous cases have held that a broad and liberal interpretation should be made of successor rights clauses. Our jurisdiction is no different than others in this respect. Our Board has consistently given a generous interpretation to Section 89. This, in our opinion, is as it should be, consistent, of course, with a proper application of the canons of interpretation and cognizant always of our quasi judicial role. If we err in our application of the statute, then, of course, we are subject to review. To be timid under these circumstances is unforgivable. We cannot shirk our resposibility to operate freely in our normally recognized sphere of expertise. If we are to discharge our responsibilities there are occasions when we must be bold enough to make determinations which, at first blush, may not appear to fit squarely within the wording of a particular section of our Act.

No statute can be framed to absolutely capture all possible situations. That is what interpretation is all about. It is an obvious impossibility to draft statutory language which will, in all circumstances, cover exactly every contingency that may arise, especially in a commercial setting. In a democratic society an absolute and unequivocal statement incapable of argument, discussion or interpretation, is abhorrent and totally undesirable.

It was argued in this and, of course, in other cases that if the Legislature intended that we, as a board, could make determinations on whether Section 89 is applicable to corporate entities essentially controlled by the same individuals, then, this province would have the equivalent of Ontario's Section 1(4). This is not necessarily so. All that Section 1(4) of the Ontario Act does is to make it easier for a board to make these determinations. Under a given set of circumstances the Board may, in its opinion, upon application, treat a number of firms or individuals as being one employer for the purposes of The Labour Relations Act of that province. What it has done is to remove some of the mystery surrounding the corporate entities and allow for labour relations purposes, a partial lifting of the corporate veil. This, then, obviates the necessity of torturously following the corporate meandering of a number of companies. It says quite simply that under certain circumstances, it does not matter whether you perform this work or carry on this business under company A, B, C, or D. We, as a Board, regard all of your companies as being one employer under the Act. The absence of such a provision in our Act does not mean that Section 89 may not be applicable in the construction industry in the case of "double-breasted companies". It may make the task of ascertaining the "transferring, leasing, selling or otherwise disposing of" more difficult, but if we can see that in some manner, there was divesting of one's business or a part thereof from one to another, then, a Section 89 situation may very well have been initiated in the corporate reorganizing of various companies which are essentially controlled by the same individuals.

In the case of Thorco Manufacturing 65 CLLC 787 the Ontario Board discussed the meaning of the work "transferred" and stated

> "the word "transfers" is obviously a term of wide significance and unless restricted by the context, it is capable of describing the multitute of transactions, whether by sale, exchange, gift, trust or otherwise by which property, rights, interests, etc., are transmitted absolutely, conditionally, etc., or by operation of law from one person to another".

and went on to state

> "It is more in harmony with the language of a remedy envisaged by the enactment to interpret the words 'and any other manner of disposition'

> as an omnibus or saving provision intended to include disposition of the business ... by any mode or means whatsoever not appropriately described by ... 'leases' or 'transfers'".

It was, of course, only recently that our Act was amended to add the words "or otherwise disposed of" to Section 89. Obviously, this was done because there were cases where it was difficult for our Board to be able to categorically point to all factors which would involve the traditional sale, lease or transfer. But the Legislature, realizing the necessity of preserving bargaining rights wished to make sure that it was not so concerned with the form of the legal transaction as it was with the end result of that transaction. The important fact to be considered and ascertained is whether or not there was a disposition made in such a way as to avoid bargaining rights obligations.

In the Thunder Bay Ambulance Service Inc. case 1978, 2 CLRBR, the Ontario Board found that although the predecessor in the business had not transferred "the same license or piece of paper" (to operate an ambulance service) nevertheless, the "exclusive entitlement as embodied in the license was transferred". It went on to say at page 250 "the predecessor ambulance operators were largely managerial and organizational in nature and it follows that the transfer of managerial skills, albeit through a request for a proposal system and competition and the continuation of identical job functions filled by the same persons as were employed by the predecessor must weight heavily with the Board". There the Board concluded that there was no establishment of a similar or parallel business, but rather the transfer of the predecessor's business to the successor.

In the Metropolitan Parking case 1981, CAN LRBR 197 the Ontario Board reviewed numerous successor rights cases and on page 208 commented

> "A business is a combination of physical assets and human initiative. In a sense, it is more than the sum of its parts. It is a dynamic activity, a 'going concern', something which is 'carried on'. A business is an organization about which one has a sense of life, movement and vigour. It is for this reason that one can meaningfully ascribe organic qualities to it. However intangible this dynamic qualify, it is what distinguishes a 'business' from an idle collection of assets. This motion is implicit in the remarks of Widjery, J. in Kenmir V. Frizzel et al. (1968), 1 All E.R. 414 - a case arising out of legislation similar to Section 55. At page 418 the learned judge commented:
>
> In deciding whether a transaction amounted to the transfer of a business, regard must be had to its substance rather than its form, and consideration must be given to the whole of the circumstances, weighing the factors which point in one direction against those which point in another. In the end, the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern, the activities of which he would carry on without interruption. Many factors may be relevant to this decision though few will be conclusive in themselves. Thus, if the new employer carries on business in the same manner as before, this will point to the existance of a transfer, but the converse is not necessarily true, because of a transfer may be complete even though the transferee does not choose to avail himself of all the rights which he acquires thereunder. Similarly, an express assignment of goodwill is strong evidence of a transfer of the business, but the absence of such an assignment is not conclusive if the transferee has effectively deprived himself of the power to complete. The absence of an assignment of premises, stock-in-trade or outstanding contracts will likewise not be conclusive, if the particular circumstances of the transferee nevertheless enable him to carry on substantially the same business as before".

In the Culver House Foods Limited case 1976 OLRB reported November 1969 (application for judicial review refused) the Board commented:

> "In each case the decisive question is whether or not there is a continuation of the business ... the cases offer a countless variety of factors which might assist the Board in its analysis; among other possibilities the presence or absence of the sale or actual transfer of goodwill, a logo or trademark, customer lists, accounts receivable, existing contracts, inventory, convenants not to compete, convenants to maintain a good name until closing or any other obligations to assist the successor in being able to effectively carry on the business may fruitfully be considered by the Board in deciding whether there is a continuation of the business. Additionally, the Board has found it helpful to look at whether or not a number of the same employees have continued to work for the successor and whether or not they are performing the same skills. The existance or non-existance of a hiatus in production as well as the service or lack of service of the customers of the predecessor have also been given weight. No list of significant considerations, however, could ever be complete; the number of variables with potential relevance is endless. It is of utmost importance to emphasize, however, that none of these possible considerations enjoys an independent life of its own, none will necessarily decide the matter. Each carries significance only to the extent that it aids the Board in deciding whether the nature of the business after the transfer is the same as it was (sic) before, i.e. whether there has been a continuation of the business".

In the Metropolitan Parking case (Supra) the Board went on to say "it is much easier to make the finding (i.e., that a transfer has occurred) and to conclude that the collective bargaining relationship should be continued, if there is substantial continuity of all of the other elements of the predecessor's business. If the elements formerly used by "A" to carry on the business are now in the hands of "B" and used for the same business purposes, it is difficult to resist the conclusion that there has been some form of transfer from A to B - albeit complex and indirect and perhaps even by the operation of "law".

In the Loblaws Groceteria Company Limited case 66 CLLC 878, the Ontario Board considered a situation where company A caused the amalgamation of two subsidiary companies to form a new corporate entity, company B. There, on the facts of that case the

Board came to the conclusion (reading from the head note) that "judicial authority binding on the Board clearly established that the Court scrupulously respected the legal fiction of the separate corporate personality and only where a subsidiary was being used as a screen or sham for improper purpose would they penetrate the subterfuge to deal with the true relationship".

The Board observed, however, on page 891 that the Courts will, in a given instance, pierce the corporate veil

> "when the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumbent a statute, to achieve or perpetrate a monopoly, or to protect knavery or crime, the courts will draw aside the web of entity ... and will do justice between real persons.
>
> The veil of Corporate Entity 12 Col. L. Rev. 498, p. 517; see also Insulation from Liability Through Subsidiary Corporations, 39 Yale L.J. 193". (Underlining ours)

It went on to say "there is no question that when a subsidiary is being used as a screen or a sham for an improper purpose, the Courts, both in the United States and in this jurisdiction, (Canada) will often penetrate the subterfuge to deal with the true relationship".

In the Metropolitan Parking case (Supra) the Board eventually came to the conclusion that there had not been a transfer of TAP's organization to Metropolitan Parking. There it found that the "know how" and skills remained TAP and that Metropolitan "was engaged in a similar, parallel business long before 1978 and its own right possessed the business expertise and "know how" required to run the parking lot. Metropolitan is a well established organization and needed only to hire additional employees to work at its new location... in the circumstances of this case, we cannot find that

TAP has transferred to Metropolitan either its 'business' or economical organization or a 'viable part' of its business which Metropolitan could then 'carry on' in order to derive new revenue or financial reward". The Board found that "Metropolitan was, and is, a successful competitor" for TAP's business.

N. & L. and Pinsent are easily distinguishable from the Metropolitan Parking case (Supra). The fact situation in this case (Metropolitan) seem to indicate that both companies were in the business of running parking lots and competed for such business. The two companies were two business competitors; run by different personnel, competing for work as separate and distinct entities.

N. & L. and Pinsent, however, are directly opposite in their operations. Both companies are run by the same people; using the same or substantially the same employees; work out of the same premises; use some of the same construction equipment and rely on expertise acquired by Pinsent over many years in the construction industry. For all practical purposes they are one and the same. The only difference appears to be the technical fact that they are both registered as separate limited liability companies. It may be more than a coincidence that the shareholders are practically the same. In addition, the principals of the companies admit that the sole reason for N. & L. is to compete non-union to circumvent the provisions of a collective agreement. The companies may bid separately but in fact, any financial or other benefits accrue to the owners who happen to own both companies.

One of the few cases in the construction industry brought to the Board's attention was a recent decision of the British Columbia Board handed down April 7, 1984 (see re Frank Brown Acoustics Kamloops (1982) Limited 6 CLRBR (NS)(247). There, a dry wall business was operated by two partners (FBA). A Union was certified to FBA. FBA had an opportunity to secure a contract on a large construction project but it depended on FBA being able to give assurance that its unionized employees would not enforce a non-affiliation clause in their collective agreement. As the head note states (being) "unable to obtain such assurances from the union and having concluded that it could only do non-union work by breaking away from FBA, one partner transferred his shareholding incorporated his own non-union company, Interior Walls Systems Limited (IWS) and secured the contract". There it was held that IWS was the successor employee to FBA. Coming to its decision in the FBA case (Supra) the Board noted that "the uniqueness of the construction industry and that there are factors to be considered in this industry which are of paramount importance to its being a vibrant, viable business operation". It reviewed Kelly Douglas and Company Limited BCLRB No 874 (1974) I CAN LRBR 77 and Gibraltor Development Corporation BCLRB No 29/82. In the latter case it stated on pages 6 and 7:

> "While the concept of the transfer of a business by means of the transfer of assets may be a valid concept in many contexts, it may be totally inapplicable in some situations in the construction industry. In the construction industry, the sole "assets" required to carry on a business may well be the skill and expertise of its principals, as well as their resulting reputation and credibility. The movement of that expertise and reputation by "winding up" one business and "starting up" another is not the same as the transfer of the tangible assets of a business.
>
> In cases where few, if any tangible assets are required to carry on a business, the principals may be the only significant "feature" of a business. It is more meaningful then to speak of them as being or constituting the business itself rather than as being "assets" of the business.
>
> Applying this reasoning to the instant case for purposes of illustration only, Jeffs Construction/ Triple R combined construction and development. The construction aspect of the business involved many tangible assets which presumably the development aspect did not. The starting up of Gibraltor, which involved only the development aspects of Jeff's Construction/Triple R would be more correctly viewed as the transfer of a part of the business (i.e., the development aspect) rather than as the transfer of certain assets of the first business (i.e., the

> principals) in the form of goodwill. The situation may occur that principals may shut down an unsuccessful enterprise and recommence the same business in another location or under the guide of a different corporate vehicle. However, since the first business was unsuccessful, one could hardly consider that there had been a transfer of goodwill. Yet, it may well be a transfer of the business so as to be caught by Section 53(1) - the principals are in fact the business" (Underlining ours).

It should be noted at this time that while in the FBA case there was no transfer of any assets, this is obviously not the situation in the instant case. In the FBA case (Supra) it is pointed out that very little in the say of equipment is necessary in the dry wall business as it is primarily labour oriented. That is not the case here. There is a considerable amount of various types of construction equipment used in this part of the construction industry, and here the evidence discloses that some equipment was sold to N. & L. while another considerable portion was leased by Pinsent's to N. & L.

This Board has come to the conclusion that the factors considered in the FBA case and the criteria used in that case are valid in our consideration of this case. Let us examine the factors.

> Firstly, who possessed the knowledge, skill and expertise to efficiently run N. & L. ? It was obviously Pinsent, Whelan, and Tulk, the very persons who "ran" Pinsent. Harold Pinsent is the President of both companies; John Whalen is Secretary-Treasurer of Pinsent and Vice-President of N. & L.; Perry Tulk is Secretary-Treasurer of N. & L., while a company he controls, Tulk's Management Limited, holds shares along with others in Pinsent's. In construction circles, in banking and bonding circles and in the commercial world, these gentlemen are well known and have enjoyed a reputation for the good business sense and good business organization for a number of years. All of these factors are, in our opinion, of almost incalculable benefit to the inception and rapid growth of N. & L.

> Secondly, N. & L. is engaged in exactly the same line of work as Pinsent. There was not even the suggestion as this Board has had in similar cases, there was some difference either in the type of operation or the nature of the work carried on. Here, both Pinsent and N. & L. do exactly the same type of work.
>
> Thirdly, almost without exception all of the employees who work with Pinsent's now work with N. & L. They take their directions from the same foremen and they have the same supervisors and the same top line management.
>
> Fourthly, the company (N. & L.) purchased some equipment from Pinsent and leased another considerable amount of construction equipment, cranes, trucks, etc., for use in its business.
>
> Fifthly, the companies are operated from the same premises and use the same office space. Any work done by Pinsent staff for N. & L. is charged out to N. & L. the way of an assessed management fee.

This Board has concluded that certainly, if not all of Pinsent business, has been transferred to N. & L., there is little or not doubt; but that a part of the business of Pinsent's has been transferred or otherwise disposed of to N. & L. The Ontario Labour Relations Board made some interesting comments concerning the meaning of the phrase "part of the business" in Beef Terminal (1979) Limited (1980) OLRB reported 1167 (1980) 3 CAN LRBR 360 where at page 1177 it observed that

> "in each of the cases to which we have referred the Board found that the predecessor had transferred a coherent and severable part of its economic organization - management or employee skills, plant, equipment, 'know how' or goodwill - thereby allowing the successor to perform the economic functions formerly performed by the predecessor. This economic organization undertook activities which gave rise to employment, and the terms and conditions of employment, together with the union's righ to bargain about them, were preserved".

While the entire business of Pinsent's has not been transferred to N. & L., we feel, that a distinct and severable part of that business has been transferred. Granted such a transfer has not put Pinsent's out of business, but we think it is plain from the evidence that Pinsent retained only as much as it had to retain in order to meet its commitment for jobs on which they had little or no choice except to employ unionized labour. There is a discernible continuity in the two businesses. As was pointed out in the FBA case (Supra) "the fact that the old business is still operating will not be determinative of the question of whether (Section 89) applies. It is simply one factor that has to be considered along with all the others in the particular case".

Obviously if that were not the case, the predecessor business would simply be continued in some form to avoid the bargaining obligations imposed by law.

Having made these findings, we hereby declare that N. & L. is a successor to a part of the business of Pinsent's within the meaning of Section 89 of The Labour Relations Act. Accordingly, N. & L. is bound by the collective agreement in effect between the union and Newfoundland Construction Labour Relations Association. The appropriate Board order will issue.

Issued at St. John's this 19th day of July, 1985.

Board member G. McDonald has filed the attached addendum.

For the Board,

J.M. NOEL, CHIEF EXECUTIVE
OFFICER as authorized by
GORDON G. EASTON, Q.C.,
CHAIRMAN.

ADDENDUM

IN THE MATTER of an application made by United Brotherhood of Carpenters and Joiners of America, Local 579, pursuant to Section 89 of the Labour Relations Act, 1977, affecting Pinsent Construction Company Limited (Pinsent) and N. & L. Construction Company Limited (N. & L.), Respondents

The application of the union in this case alleges that "on or about May 17, 1983, Pinsent Construction Company Limited transferred part of its business or the operation thereof to N. & L. Construction Limited", and requests that, in accordance with Section 89(2) of the Labour Relations Act, The Board declared N. & L. to be the successor to Pinsent. The Board has found that, in this particular case, there has been a succession within the meaning of Section 89 of the Act, and while I am in agreement with this decision of the Board, and in general agreement with the reasons which support it, there are several particular points which I nevertheless wish to review and emphasize.

To begin with there is not much doubt in my own mind that Section 89 of our Labour Relations Act was developed and put in place by the policy-makers and the legislature of this province to anticipate and deal with situations which involve the straight forward, arms-length disposition of a business from one enterprise to another. In conceptual terms, one can imagine a straight line continuum, where one enterprise which has existed for some time ceases to do so, at which point another, different enterprise takes over from where the former one left off, to carry on the same business activities into the future.

These types of situations are distinguishable from other situations where, for example, two or more businesses or operations which are owned or controlled by the same corporation, individual, or group of individuals have existed separately for some time, and/or where two or more businesses or operations are, or have been active within their own spheres of business activity.

These distinctions may appear to some to be marginal ones, but they are not. I start from the premise that the separate legal entity of any business or operation deserves the strictest respect in terms of its own identity and purpose, both in law and in practical terms. In my opinion, the Board must always accept as a given, at least in the first instance, the responsibility for treating two or more businesses or operations as autonomous bodies with separate purposes, and as bodies which are not connected in any way through sale, lease, transfer, or any other manner of disposition.

However, there are admittedly circumstances which should dictate a departure from this standard. In general terms, I believe that it is justified to look beneath the "corporate veil" where it is evident that the sole purpose for the establishment of a second or so-called "double-breasted" company is to circumvent statutory obligations such as those which exist under the Labour Relations Act.

This brings us back to Section 89 of the Act, and its raison d'etre. While there might be various technical arguments relating to the precise interpretation of the law, I doubt that there is any substantial disagreement over what the general thrust of Section 89 was intended to be. In simple lay-man's terms, Section 89 is intended to ensure that a union which has representation rights with a given employer will continue to have those rights with any employer(s) who subsequently takes over the business interests (or part thereof) of that employer.

An obvious corollary of this statement is that an employer cannot choose to escape its collective bargaining obligations simply by setting up another corporate entity. I do not believe that it was the intention of our legislature to permit the central purpose of the legislature to be distorted in this way.

As the decision of the Board points out, uncontradicted evidence in the present case clearly established that the only reason for the establishment of N. & L. Construction was to secure business that Pinsent was unable to secure, through the advantage of non-union wage rates. Evidence indicated that, from the Company's point of view, it was a matter of "survival" and, in reality, this may have been true. Indeed, I do not find it difficult to empathize with the plight of private sector operators in this province who are unable to compete in a depressed economy such as our own with comparatively over-priced labour.

However, with respect to the application before this Board, we must be confined in our deliberations to the issue of whether or not the central provisions of Section 89 have been violated. In this particular case, and given the specific circumstnaces involved, I will agree that they have been, and that N. & L. must therefore assume the successorship responsibilities which fall to it under Section 89.

The specific circumstances to which I refer deserve mention here, since, in my opinion, they are important in helping to distinguish the present case from other situations which have come before us in the past or which may arise in the future:

(a) N. & L. is engaged in exactly the same line of work as was Pinsent;
(b) Almost with exception, all of the employees of N. & L. were former employees of Pinsent;
(c) N. & L. either purchased or leased much of its equipment from Pinsent;
(d) N. & L. operates from the same premises and used the same office space and facilities as did Pinsent;
(e) Subsequent to the establishment of N.& L., very little new work was performed or bid by Pinsent;

(f) The acknowledge purpose of this establishment of N. & L. was to escape the collective agreement obligations (specifically concerning wages) that were previously borne by Pinsent.

These circumstances would appear to describe a situation where one enterprise (Pinsent) has, for all intents and purposes, ceased to exist, and another (N. & L.) began, with the latter taking up the very same business activities in which Pinsent was formerly involved. This conclusion, together with the acknowledge motive for the establishment of N. & L. would appear to bring this particular situation within the ambit of Section 89.

Respectfully submitted,

GERARD V. McDONALD
Employer Nominee

Appendix 5 Schedule "B"

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

International Association of
Machinists and Aerospace Workers,
Lodge 927

- and -

Professional Personnel Services
Limited

- and -

CP Personnel Limited

BEFORE: Charles W. White, Q.C., Vice-Chairman
Mr. F.W. Russell and Mr. J. Walsh, Members

FOR THE APPLICANT: Mr. Lowell Paulson

FOR CP Personnel Services Limited, one of the Respondents: Mr. Donald Burrage.

PRELIMINARY:

This application was heard before the Board on September 3rd. 1985. On the 4th day of September, 1985 the Board issued an Order rejecting the application on the grounds that there had not been a sale, lease, transfer or disposition within the meaning of Section 89 of the Act. The Applicant has requested the reasons for the decision of the Board.

REASONS:

Professional Personnel Services Limited ("PPS") and C P Personnel Limited ("CPP") are companies controlled by Mrs. Jean Payne.

PPS is a limited company incorporated in 1980 under the laws of the Province of Newfoundland CPP started business in 1980 in the Province of Nova Scotia as CP Personnel Services, a proprietorship. In February, 1985 CP Personnel Services became incorporated in the Province of Nova Scotia as " C P Personnel Limited".

On June 1st, 1982 Burns International Security Services Limited ("Burns") became the supplier of bilingual information services at Gander International Airport. The contract with the Ministry of Transport was for three years and ran from June 1st, 1982 to May 31st, 1985. On September 8th, 1982 the Applicant was certified as bargaining agent for the employees of Burns.

In February, 1984, Burns assigned this contract to PPS. PPS gave voluntary recognition to the Applicant and a collective agreement was concluded which expired on May 31st, 1985, the same date as the company's contract with the Ministry of Transport.

On February 11th, 1985 the Applicant served notice on PPS that it wished to negotiate changes in the collective agreement which was expiring May 31st.

Sometime after February 11th, 1985, the Ministry of Transport called public tenders for the bilingual services at Gander in respect of the services provided by PPS which would be terminating on May 31st, 1985. In addition to other bidders, two of the bidders were PPS and CPP.

The Ministry of Transport awarded the contract to CPP. All employees of PPS were given layoff notices and on June 1st, 1985, CPP took over the contract with the Ministry of Transport and hired new employees.

The Applicant claims that CPP is a successor to PPS and that Section 89 of The Labour Relations Act should apply.

The relevant Section of the Act is as follows:

> "89.(1) Where an employer sells, leases, transfers or otherwise disposes of, or agrees to sell, lease, transfer or otherwise dispose of his business or the operations thereof or any part of either of them, and
>
> (a) the employer or the purchaser, leasee, transferee, or person otherwise acquiring the business is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by the sale, lease, transfer, disposition by other means or contract;
>
> (b) one or more bargaining agents have been certified as bargaining agent for any such employees;
>
> (c) one or more trade union or a council of trade unions has applied to be certified as bargaining agent for any such employees; or
>
> (d) one or more bargaining agents have given or are entitled to give notice under either Section 72 or Section 73 with respect to any such employees, then, unless the Board otherwise directs, the collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon the purchaser, leasee, transferee or person otherwise acquiring the business.

Clearly this section is intended to apply "... where an employer sells, leases, transfers or otherwise disposes of ... his business or the operations thereof or any part of either of them, and the employer or the purchaser, leasee, transferee or other person otherwise acquiring the business is a party to or is bound by a collective agreement with a bargaining agent ... " (emphasis added)

On the facts, the Board cannot discern that there has been a sale, lease, transfer, or other disposition of the business of an employer.

The Ministry of Transport called for tenders and PPS and CPP both submitted tenders. CPP was awarded the tender.

The previous contract expired on May 31st, 1985 and the tender was in relation to a contract for a period commencing after the expiration of the previous contract. Even if the Board were to find that there was a relationship between PPS and CPP because of a common majority shareholder, it is difficult to see how there has been any sale, lease, transfer or other disposition of any business.

There is nothing in the Act to prohibit two limited companies, controlled by the same majority shareholder, from bidding for the same new business where the collective agreement between one of the companies and a union expires prior to the inception of a new contractual relationship.

While the Board has consistently given a generous interpretation to section 89 of the Act the Board cannot go beyond the meaning and intent of the section. The section has been styled as a "successor rights" section and for this section to apply it would have to be determined that CPP is a successor to PPS. The mere fact that there is a common majority shareholder would not be sufficient to invoke section 89(1). Further, as indicated, section 89(1) cannot apply unless there is in fact a sale, lease, transfer or other disposition. There is no evidence to indicate any such arrangement, or any agreement in relation thereto.

Issued at St. John's this 25th day of November, A.D., 1985.

For the Board,

Charles W. White, Q.C.
Chairman

Appendix 6 Schedule "B"

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Retail, Wholesale and Department
Store Union, Local 597, ("the union")

- and -

Eastern Drug Service, a division of
National Drug Limited, Quebec, ("the
employer")

BEFORE: Gordon G. Easton, Q.C., Chairman
F. Russell and G. Gillingham, members.

REASONS FOR DECISION:

This is an application pursuant to Section 18 of The Labour Relations Act, 1977 received from Retail, Wholesale and Department Store Union, Local 597, ("the union"), requesting the Labour Relations Board to amend the certification order issued to the applicant on 18th November, 1981 to include the classification of Warehouse Manager Supervisor.

The Board by order dated 16th January, 1985 rejected the application. The Board's reasons for decision follow.

From the information before the Board, the union is alleging that the employee in the disputed classification is spending a significant part of his time performing work ordinarily done by bargaining unit employees. Although the agreement places restrictions on this practice, the union has been unsuccessful in correcting the problem through the grievance procedure. The information reveals that grievances were filed and the problem was corrected for a short time. The union contends, that, despite the filing of grievances, the Warehouse Manager/Supervisor continues to perform the bargaining unit work.

The employer contends that the Warehouse Manager perform the duties of a Manager and does not do any day-to-day work of the bargaining unit except in overtime situations. It these cases the union employees refuse to perform the work when requested to work.

Information before the Board shows that the Warehouse Manager supervises nine(9) employees which includes scheduling work; approving overtime when it is worked; prepares reports on warehouse operations for Director of Warehousing and represents Management on the Labour-Management Committee. Information also reveals that the Warehouse Manager spends a portion of his time, on practically a daily basis, performing work of the bargaining unit. There is disagreement on this issue, but there appears to be little doubt that the Warehouse Manager does perform some hands-on work. This is reinforced by the fact that the union filed grievances that were settled when the employer agreed that he would not be performing any bargaining unit work.

The Labour Relations Board, however, is satisfied that the overall duties of the Warehouse Manager place him in the position as a Manager. The Collective Agreement is effect between the parties provides in Article 6;

> "Persons in positions outside the bargaining unit shall not perform work ordinarily done by classifications for which the working conditions are covered by this Agreement except for the purpose of demonostration or instruction or in the event of a job for which no member of the bargaining unit is capable of performing or for the purpose of preparing inventories or in emergency circumstances."

This article provides the union with an avenue to deal with persons outside the bargaining unit who perform bargaining unit work. If the union feels that the grievance process to date has not been effective, it may be necessary to more rigorously pursue the process. There is some evidence that the union has made attempts to resolve the problem, but they may not have followed through on the agreement reached with the employer to ensure its enforcement.

It appears to the Board that the procedure is in place to resolve the problem in this case and it should be used by the union. Based on the information before it, the Board is satisfied that the Warehouse Manager is not appropriate to be included in the bargaining unit.

For the above reasons the Board issued its order of 16th January, 1985.

Issued at St. John's this 27th day of June, 1985.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Schedule "C"

The Fishing Industry (Collective Bargaining) Act, 1971

Statement of Proceedings Before The Board during the year, 1985

No. of Applications pending at 1 January, 1985	2
No. of Applications filed during the year	0
No. of Applications Withdrawn	2
No. of Applications pending 31 December, 1985	0

Applications Withdrawn

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Fishery Products International.
2. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Fishery Products International.

Schedule "D"

The Public Service (Collective Bargaining) Act, 1973

Statement of Proceedings before the Board during the year, 1985

Applications for Certification

1.	Number of Applications pending 1 January, 1985	1
2.	Number of Applications filed during the year	13
3.	Total Applications dealt with by the Board	11
4.	Number of Applications pending at 31 December, 1985	3

Miscellaneous Applications

1.	Applications pending 1 January, 1985	52	
2.	Applications received under Section 10 - Declaration of Essential Employees	11	
3.	Applications received under Section 39 - Grievances and Successor Rights	2	
4.	Applications received under Section 40 - Reconsideration and Amendments of Decision	5	
5.	Total Miscellaneous Applications		70
6.	Total Miscellaneous Applications dealt with by the Board		8
7.	Total Applications pending 31 December, 1985		62

Number of Representation Votes conducted	0

Schedule "E"

The Public Service (Collective Bargaining) Act, 1973
Statement of Proceedings before the Board during 1985

Applications for Certification

1. Newfoundland and Labrador Nurses' Union and Carmelite House, Grand Falls

Decision

The Board ordered that Newfoundland and Labrador Nurses' Union be certified to be the bargaining agent for a unit of employees of Carmelite House, Grand Falls comprising all full-time and regular part-time Nurses save and except Director of Nursing.

There are 14 employees in the bargaining unit.

2. Newfoundland and Labrador Nurses' Union and Bonavista North Interfaith Senior Citizens Association.

Decision

The Board ordered that Newfoundland and Labrador Nurses' Union be certified to be the bargaining agent for a unit of employees of Bonavista North Interfaith Senior Citizens Association comprising all Nurses save and except Director of Nursing employed by the employer at Bonnews Lodge.

There are 7 employees in the bargaining unit.

3. International Brotherhood of Electrical Workers, Local Union 1615 and Newfoundland and Labrador Hydro, St. John's.

Decision

The Board ordered that all Temporary Employees working in the Operations Division be included in the bargaining unit as agreed in the attached memorandum of understanding.

Memorandum of understanding between the International Brotherhood of Electrical Workers, Local 1615, and the Newfoundland and Labrador Hydro Electric Corporation, concerning the certification of "all Temporary Employees working in the Operations Division".

The Union and the Corporation agree to request the Labour Relations Board to include this memorandum of understanding as an addendum to the certification order.

1. The parties request the Labour Relations Board to amend the existing order of certification to include temporary employees in the existing Operations Collective Bargaining Unit.

2. Temporary employees may be permitted to vote on the ratification of a labour agreement only if they are actively employed by Newfoundland Hydro at the time voting is being conducted.

3. "Temporary Employees" means those employees hired by the Corporation on a temporary or casual basis for a period in excess of eighty hours. The Corporation undertakes to ensure that no employee will be terminated and replaced by a new employee if the work assignment continues beyond the eighty hours. Co-op students shall be excluded from the unit.

4. The Union and the Corporation recognize that certain provisions of the Operations Collective Agreement are not appropriate for temporary and casual employees and negotiations would be required to determine any substitutions and exclusions.

4. Newfoundland Association of Public Employees and St. Augustine's Children's Home, Stephenville.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of St. Augustine's Children's Home, Stephenville, comprising all employees save and excect House Parent.

There are 6 employees in the bargaining unit.

5. Newfoundland Association of Public Employees and Memorial United Church Group Home, Grand Falls.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of Memorial United Church Group Home, Grand Falls, comprising all employees save and except House Parent.

There are 7 employees in the bargaining unit.

6. Newfoundland Association of Public Employees and Pine Heights Residence Association, Grand Falls.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of Pine Heights Residence Association, Grand Falls, comprising all employees save and except House Parent.

There are 3 employees in the bargaining unit.

7. Newfoundland Association of Public Employees and Gander United Church Group Home Board.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of Gander United Church Group Home Board comprising all employees save and except Group Home parent.

There are 8 employees in the bargaining unit.

8. Newfoundland Association of Public Employees and Gambo Group Home.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of Gambo Group Home comprising all employees save and except Co-ordinator.

There are 7 employees in the bargaining unit.

9. Newfoundland Association of Public Employees and Gamida Group Home.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of Gamida Group Home comprising all employees save and except Group Home Parent.

There are 2 employees in the bargaining unit.

10. International Brotherhood of Electrical Workers, Local Union 1615 and Newfoundland and Labrador Hydro, St. John's.

Decision

The Board ordered that the Bargaining Unit as established by the Order-in-Council dated 15 June, 1971 (Operations Unit) be amended by including Security Staff.

There are 6 employees included in this amendment.

11. Newfoundland Association of Public Employees and United Church Group Home, St. John's.

Decision

The Board ordered that Newfoundland Association of Public Employees be certified to be the bargaining agent for a unit of employees of United Church Group Home, St. John's comprising all employees employed by the employer at Dundas Street save and except Co-ordinator.

There are 9 employees in the bargaining unit.

Applications Pursuant to Section 10 of the Act
Declaration of Essential Employees

1. The Carbonear General Hospital and Newfoundland Association of Public Employees.

   The matter is pending before the Board.

2. The Carbonear General Hospital and Canadian Union of Public Employees.

   The matter is pending before the Board.

3. Central Newfoundland Hospital Corporation, Grand Falls and Newfoundland Association of Public Employees (Lab & X-Ray).

   The matter is pending before the Board.

4. A. M. Guy Memorial Hospital, Buchans and Newfoundland Association of Public Employees (Lab & X-Ray)

   The matter is pending before the Board.

5. A. M. Guy Memorial Hospital, Buchans and Newfoundland Nurses' Union (Essential Employees).

   The matter is pending before the Board.

6. A. M. Guy Memorial Hospital, Buchans and Newfoundland Association of Public Employees (Hospital Support Staff)

   The matter is pending before the Board.

7. Notre Dame Bay Memorial Hospital, Twillingate and Newfoundland Nurses' Union.

   The matter is pending before the Board.

8. Notre Dame Bay Memorial Hospital (Lab & X-Ray) and Newfoundland Association of Public Employees.

   The matter is pending before the Board.

9. Carbonear General Hospital and Newfoundland Nurses' Union

   The matter is pending before the Board.

10. Blue Crest Inter-Faith Home and Newfoundland Association of Public Employees, Local 9204.

    The matter is pending before the Board.

11. The Agnes Pratt Home, St. John's and Newfoundland Association of Public Employees

    The matter is pending before the Board.

12. The Salvation Army Grace General Hospital, St. John's and Newfoundland Association of Public Employees (Lab & X-Ray)

    The matter is pending before the Board.

13. Green Bay Health Care Centre and Newfoundland Nurses' Union

    The matter is pending before the Board.

14. Green Bay Health Care Centre and Newfoundland Association of Public Employees.

    The matter is pending before the Board.

15. Masonic Park and Newfoundland Association of Public Employees

    The matter is pending before the Board.

16. Interfaith Home for Senior Citizens, Corner Brook and Canadian Union of Public Employees.

    The matter is pending before the Board.

17. Charles S. Curtis Memorial Hospital, St. Anthony and Newfoundland Association of Public Employees.

    The matter is pending before the Board.

18. Charles S. Curtis Memorial Hospital, St. Anthony and Newfoundland Nurses' Union.

    The matter is pending before the Board.

19. Charles S. Curtis Memorial Hospital, St. Anthony and Canadian Union of Public Employees.

    The matter is pending before the Board.

20. Glenbrook Lodge and Newfoundland Nurses' Union

    The matter is pending before the Board.

21. Glenbrook Lodge and Canadian Union of Public Employees

    The matter is pending before the Board.

22. Janeway Child Health Centre and Newfoundland Association of Public Employees (Support Staff)

    The matter is pending before the Board.

23. Janeway Child Health Centre and Newfoundland Association of Public Employees (Lab & X-Ray)

    The matter is pending before the Board.

24. Janeway Child Health Centre and Association of Allied Health Professionals, Newfoundland and Labrador.

    The matter is pending before the Board.

25. Carmelite House, Grand Falls and Canadian Union of Public Employees, Local 990.

    The matter is pending before the Board.

26. The Harry L. Paddon Memorial Home, Happy Valley and Newfoundland Nurses' Union

    The matter is pending before the Board.

27. The Harry L. Paddon Memorial Home, Happy Valley and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

28. International Brotherhood of Electrical Workers, Local 1615 and Newfoundland and Labrador Hydro.

The matter is pending before the Board.

29. Lakeside Homes Limited and Newfoundland Association of Public Employees

The matter is pending before the Board

30. Lakeside Homes Limited and Newfoundland Nurses' Union

The matter is pending before the Board

31. Melville Hospital and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board

32. Melville Hospital and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board.

33. Melville Hospital and Newfoundland Nurses' Union

The matter is pending before the Board.

34. Melville Hospital and Allied Health Professional Employees.

The matter is pending before the Board.

35. Blue Crest Inter-Faith Home, Grand Bank and Newfoundland Association of Public Employees

The matter is pending before the Board

36. Captain William Jackman Memorial Hospital and Canadian Union of Public Employees, Local 1581.

The matter is pending before the Board

37. North Haven Manor Senior Citizen's Home and Newfoundland Association of Public Employees

The matter is pending before the Board

38. Captain William Jackman Memorial Hospital and Newfoundland Association of Public Employees

The matter is pending before the Board.

39. Boonews Lodge, Badger's Quay and Newfoundland Association of Public Employees

The matter is pending before the Board.

40. Bay St. George Senior Citizen's Home and Newfoundland Association of Public Employees

The matter is pending before the Board

41. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board

42. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

43. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Nurses' Union

The matter is pending before the Board.

44. Dr. Charles L. LeGrow Health Centre, Port Aux Basques and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board.

45. Dr. Charles L. LeGrow Health Centre, Port Aux Basques and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

46. Dr. Charles L. LeGrow Health Centre, Port Aux Basques and Newfoundland Nurses' Union.

The matter is pending before the Board

47. Inter-Faith Home for Senior Citizens, Corner Brook and Canadian Union of Public Employees, Local 488.

The matter is pending before the Board.

48. The General Hospital Corporation, St. John's and Association of Allied Health Professionals, Newfoundland and Labrador.

The matter is pending before the Board.

49. The Waterford Hospital Board and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

50. St. Clare's Mercy Hospital and Association of Allied Health Professionals, Newfoundland and Labrador

The matter is pending before the Board.

51. Treasury Board and Newfoundland Association of Public Employees.

The matter is pending before the Board.

52. Children's Rehabilitation Centre and Newfoundland and Labrador Nurses' Union

The matter is pending before the Board.

53. Children's Rehabilitation Centre and Newfoundland Association of Public Employees.

The matter is pending before the Board.

54. Children's Rehabilitation Centre and Association of Allied Health Professionals

The matter is pending before the Board.

55. Lakeside Homes, Ltd., Gander, and Newfoundland Association of Public Employees.

The matter is pending before the Board.

56. General Hospital Corporation, St. John's and Newfoundland Association of Public Employees.

The matter is pending before the Board.

57. Salvation Army Grace General Hospital and Canadian Union of Public Employees.

The matter is pending before the Board.

Applications Pursuant to Section 39
Grievance and Successor Rights

1. Canadian Union of Public Employees, Local 1270 and St. Clare's Mercy Hospital, St. John's and Newfoundland Association of Public Employees.

Decision

The Board, following investigation and consideration of the representations of the interested parties and a hearing decided it did not have jurisdiction to deal with the application and rejected it.

2. Canadian Union of Public Employees, Local 1270 and The Salvation Army Grace General Hospital, St. John's

Decision

The Board, following investigation and consideration of the representations of the interested parties decided it did not have jurisdiction to deal with the application and rejected it.

3. Elaine Buckle, et al., and Canadian Union of Public Employees, Local 488.

Decision

The Board was satisfied that for whatever reason the applicant had been unable to obtain the support or assistance of Canadian Union of Public Employees, Local 488 and ordered pursuant to Section 39 of the Act, that Elaine Buckle, et al., is deemed to be a party to the collective agreement in effect between Canadian Union of Public Employees, Local 488 and Western Memorial Hospital Corporation effective 29th March, 1982 to 31st December, 1983, as amended or renewed.

Applications pursuant to Section 40
Reconsideration and Amendment of Decision

1. Newfoundland and Labrador Nurses' Union and Central Newfoundland Hospital, Grand Falls and Newfoundland Hospital Association.

Decision

The Board, following investigation, consideration of the representations of the interested parties and a hearing, saw no reason to include the classification of Nursing Supervisor I in the bargaining unit and rejected the application.

2. North Haven Manor Senior Citizen's Home and Newfoundland and Labrador Nurses' Union

Decision

The Board, following investigation and consideration of the representations of the interested parties, agreed to amend the order of certification as requested and ordered that the certification order issued to Newfoundland and Labrador Nurses' Union on the 17th day of May, 1978 affecting North Haven Manor Senior Citizen's Home be amended by excluding the classification of Nursing Supervisor I.

3. North Haven Manor Senior Citizen's Home and Newfoundland Association of Public Employees.

Decision

The Board, following the investigation and consideration of the representations of the interested parties ordered that the order of certification issued to Newfoundland Association of Public Employees affecting North Haven Manor Senior Citizen's Home on the 15th day of March, 1978 be amended by excluding the classification of Department Head of Maintenance - Cottages.

4. Government of Newfoundland and Labrador as represented by Treasury Board and Newfoundland Association of Public Employees.

Decision

The Board ordered that the order issued by the Board on the 10th day of November, 1982, as amended, to Newfoundland Association of Public Employees affecting Government of Newfoundland and Labrador as represented by Treasury Board be amended by excluding the classification of Accountant III (Pensions).

5. The Salvation Army Grace General Hospital, St. John's and Canadian Union of Public Employees, Local Union 1271.

Decision

The Board ordered that the certification order issued to Canadian Union of Public Employees, Local Union 1271 on the 19th day of June, 1970 affecting The Salvation Army Grace General Hospital, St. John's be amended by excluding the Executive Housekeeper, Assistant Executive Housekeeper, Non-working Foremen and those above the rank of Non-working Foremen.

6. Newfoundland Association of Public Employees and Government of Newfoundland and Labrador as represented by Treasury Board.

Decision

The parties informed the Board that agreement was reached on all classifications in the Department of Transportation and the Board ordered that the classifications listed in the attached Appendix "A" be included in the bargaining unit and the classifications in the attached Appendix "B" be excluded from the bargaining unit.

APPENDIX "A"

DEPARTMENT OF TRANSPORTATION

INCLUSIONS

CLASS TITLE

1. Clerk I
2. Clerk II
3. Clerk III
4. Clerk IV
5. Clerk Typist I
6. Clerk Typist II
7. Clerk Typist III
8. Clerk Stenographer II
9. Payroll Clerk II
10. Payroll Clerk III
11. Word Processing Equipment Operator I
12. Data Preparation Operator
13. Highway Divisional Clerk
14. District Highway Administrative Officer
15. Accounting Clerk I
16. Accounting Clerk II
17. Accountant I

18. Economist III
19. EDP Systems Officer
20. Buyer I
21. Buyer II
22. Departmental Programme Co-ordinator
23. Microfilm Operator I
24. Motor Vehicle Inspector
25. Driver Examiner/Motor Vehicle Inspector I
26. Driver Examiner/Motor Vehicle Inspector II
27. Systems Control Manager (MRD)
28. Highway Traffic Technician I
29. Highway Traffic Technician II
30. Engineer I
31. Engineer II
32. Engineer III
33. Engineer IV (Bridges)
34. Highway Environmental Planner
35. Highway Planner
36. Materials Inspector I
37. Materials Inspector II
38. Materials Inspector III
39. Engineering Aide I
40. Engineering Aide II
41. Engineering Technician I
42. Engineering Technician II
43. Engineering Technician III
44. District Highway Engineer Assistant

45. Highway Equipment Manager
46. Transportation Draughting Supervisor
47. Draughtsman I
48. Draughtsman II
49. Transportation Officer
50. Manager - Government Vehicle Services

APPENDIX "B"

DEPARTMENT OF TRANSPORTATION

EXCLUSIONS

CLASS TITLE

1. Deputy Minister
2. Assistant Deputy Minister
3. Secretary to the Director of Personnel (Clerk Stenographer II)
4. Secretary to the Deputy Minister
5. Secretary to the Assistant Deputy Minister
6. Secretary to the Minister
7. Registrar I
8. Accountant III (Chief Accountant)
9. Financial Manager
10. Personnel Director II
11. Systems Manager
12. Administrative Officer II
13. Director of Air Services
14. Motor Vehicle Deputy Registrar
15. Motor Vehicle Deputy Registrar (Regional Services)
16. Registrar of Motor Vehicles

17. Marine Engineering Superintendent
18. Engineer IV (Support Services)
19. Highway Traffic Engineer
20. Soils and Paving Engineer
21. Director of Highway Planning and Research
22. Director of Highway Design
23. Director of Highway Support Services
24. Highway Construction Engineer
25. Chief Highway Design Engineer
26. Highway Maintenance Engineer
27. Chief Bridge Engineer
28. District Manager (Transportation)
29. District Engineer (Transportation)
30. Materials Inspection Supervisor
31. Assistant Superintendent of Highway Operations
32. Superintendent of Highway Operations
33. Superintendent of Equipment (Transportation)
34. District Highway Administrator
35. Director of Ferry Operations
36. Chief Aircraft Inspector
37. Chief Pilot

7. Newfoundland Association of Public Employees and Government of Newfoundland and Labrador as represented by Treasury Board.

Decision

The parties informed the Board that agreement was reached on all classifications in the Department of Forest Resources and Lands and the Board ordered that the classifications listed in the attached Appendix "A" be included in the bargaining unit, and the classifications in the attached Appendix "B" be excluded from the bargaining unit.

APPENDIX "A"

DEPARTMENT OF FOREST, RESOURCES AND LANDS

INCLUSIONS

1. Clerk I
2. Clerk II
3. Clerk III
4. Clerk-Typist II
5. Clerk-Typist III
6. Clerk-Stenographer II
7. Secretary (Crown Lands Committee)
8. Payroll Clerk I
9. Payroll Clerk II
10. Accounting Clerk I
11. Accounting Clerk II
12. Accountant I
13. Statistical Officer
14. Management Analyst I
15. EDP Systems Officer
16. Departmental Management Analyst
17. Departmental Programme Co-Ordinator
18. Administrative Officer I
19. Aerial Photographic Technician I
20. Aerial Photographic Technician II
21. Information Officer
22. Public Information Officer
23. Publications Officer
24. Library Technician II
25. Engineer I

26. Engineer III
27. Lands Officer
28. Control Surveying Technician
29. Control Surveyor
30. Land Survey Inspector I
31. Land Survey Inspector II
32. Land Survey Inspector III
33. Draughtsman I
34. Cartographic Technician I (Photogrammerty)
35. Cartographic Technician I (Draughting)
36. Cartographic Technician
37. Cartographic Technician III (Photogrammetry)
38. Forest Protection Specialist
39. Forest Tree Nursery Foreman
40. Sawmilling and Scaling Specialist
41. Special Projects Officer (Forestry)
42. Forestry Technician I
43. Forestry Technician II
44. Forestry Technician III
45. Assistant Forest Ranger
46. Forest Ranger I
47. Forest Ranger II
48. Forest Geneticist
49. Forester I
50. Forester II
51. Forester III
52. Regional Resource Officer
53. Land Management Specialist

54. Land Use Technician

55. Extension, Information and Education Supervisor (Forestry and Lands)

APPENDIX "B"

EXCLUSIONS

1. Deputy Minister
2. Assistant Deputy Minister
3. Secretary to the Director of Administration (Clerk-Stenographer III)
4. Secretary to Deputy Minister
5. Secretary to Assistant Deputy Minister
6. Secretary to Minister
7. Registrar II
8. Accounting and Financial Manager
9. Regional Forestry Administrator
10. Director of Administration II
11. Land Titling Supervisor
12. Director of Land Surveys
13. Lands Supervisor
14. Supervisory Cartographic Technician
15. Director of Mapping
16. Supervisor of Data Acquisition
17. Regional Resource Director II
18. Director of Forest Policy and Planning Co-Ordinator
19. Forestry Management Supervisor
20. Management Planning Supervisor
21. Forestry Regional Supervisor
22. Director of Resource Roads
23. Director of Forest Management

24.	Director of Forest Protection
25.	Director of Land Management
26.	Director of Forest Products Development
27.	Forest Tree Nursery Manager
28.	Director of Silviculture
29.	Director of Crown Lands

8. Newfoundland Association of Public Employees and Government of Newfoundland and Labrador as represented by Treasury Board.

Decision

The parties informed the Board that agreement was reached on all classifications in the Department of Culture, Recreation and Youth and the Board ordered that the classifications listed in the attached Appendix "A" be included in the bargaining unit and classifications in the attached Appendix "B" be excluded from the bargaining unit.

APPENDIX "A"

DEPARTMENT OF CULTURE, RECREATION AND YOUTH

INCLUSIONS

1.	Clerk I
2.	Clerk II
3.	Clerk III
4.	Clerk IV
5.	Clerk-Typist I
6.	Clerk-Typist II
7.	Clerk-Typist III
8.	Clerk-Stenographer I
9.	Clerk-Stenographer II
10.	Duplicating Equipment Operator
11.	Data Preparation Operator
12.	Accounting Clerk I

13. Accounting Clerk II
14. Statistician II
15. Records Manager
16. Departmental Program Co-Ordinator
17. Administrative Officer I
18. Public Information Officer
19. Hunter Safety Training Officer I
20. Hunter Safety Training Officer II
21. Swimming Instructor
22. Swimming Pool Manager
23. Recreation Centre Assistant Manager
24. Recreation Centre Manager I
25. Recreation Centre Manager II
26. Recreation and Sports Consultant
27. Recreation Specialist
28. Recreation and Sports Supervisor
29. Museum Attendant I
30. Museum Attendant II
31. Museum Assistant
32. Museum Technician I
33. Museum Technician III
34. Museum Exhibits Designer
35. Museum Technician II
36. Museum Curator I
37. Historic Sites Officer I
38. Historic Sites Officer II
39. Historian
40. Theatre Assistant I

41. Theatre Assistant II
42. Theatre Assistant III
43. Costume Designer
44. Theatre Technician I
45. Theatre Technician II
46. Theatre Technician III
47. Archives Technician I
48. Archives Technician II
49. Archives Assistant
40. Archivist
51. Recreation Facilities Design Specialist
52. Draughtsman II
53. Wildlife Field Technician I
54. Wildlife Field Technician II
55. Wildlife Field Technician III
56. Wildlife Laboratory Technician I
57. Wildlife Laboratory Technician II
58. Assistant Wildlife Protection Officer
59. Wildlife Protection Officer I
60. Wildlife Protection Officer II
61. Wildlife Biologist I
62. Wildlife Biologist II
63/ Parks Technician I
64. Parks Technician II
65. Park Ranger I
66. Park Ranger II
67. Park Ranger III

68. Park Officer I
69. Park Officer II
70. Park Officer III
71. Parks Safety Officer
72. Park Planner
73. Regional Parks Inspector
74. Parks Interpretation Technician
75. Parks Interpretation Supervisor
76. Youth and Recreation Specialist
77. Youth Services Supervisor
78. 4-H Co-Ordinator

APPENDIX "B"

EXCLUSIONS

1. Deputy Minister
2. Assistant Deputy Minister
3. Secretary to the Director of Administration (Clerk Stenographer II)
4. Secretary to Minister
5. Secretary to Deputy Minister
6. Secretary to Assistant Deputy Minister
7. Accountant II (Chief Accountant)
8. Director of Administration II
9. Director of Recreation and Sports
10. Museum Curator II
11. Historic Resources Assistant Director
12. Historic Resources Director
13. Programming and Promotion Manager

14. Arts and Culture Centre Manager
15. Arts and Culture Centre Regional Manager
16. Cultural Affairs Program Administrator
17. Provincial Archivist
18. Wildlife Biologist III
19. Wildlife Biologist IV
20. Regional Wildlife Protection Supervisor
21. Provincial Wildlife Protection Supervisor
22. Wildlife Management Director
23. Director of Wildlife Research and Management
24. Park Development Officer
25. Parks Regional Supervisor
26. Parks Operations Supervisor
27. Parks Director
28. Director of Youth Services

Applications pending before the Board pursuant to Section 40

1. Salvation Army Grace General Hospital and Newfoundland Nurses' Union.
2. Newfoundland Association of Public Employees and Government of Newfoundland and Labrador as represented by Treasury Board.
3. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Association of Public Employees.
4. Newfoundland Association of Public Employees and Blue Crest Interfaith Senior Citizen's Home.

Schedule "F"

The Newfoundland Teachers (Collective Bargaining) Act, 1973

Statement of Proceedings before the Board during the year, 1985

There was no activity under this legislation during this period.

Schedule "G"

The Occupational Health and Safety Act

Statement of Proceedings before the Board during the year, 1985

There was no activity under this legislation during this period.

Schedule "H"

The Interns and Residents Collective Bargaining Act

Statement of Proceedings Before the Board during the year, 1985

Applications for Designation of Essential Employees

1.	Number of Applications pending 1 January, 1985	0
2.	Number of Applications filed during the year	5
3.	Number of Applications dealt with by the Board	5
4.	Number of Applications pending as of 31 December, 1985	0

Applications Pursuant to Section 10 (Essential Employees)

1. General Hospital Corporation and The Professional Association of Interns and Residents of Newfoundland.

Decision

Whereas the employer has supplied to the Labour Relations Board a statement in writing of the number of employees in each classification in the unit represented by the bargaining agent who are considered by the employer to be essential employees and the bargaining agent has consented in writing to the application, therefore the Board, pursuant to Section 10(2) of The Interns and Residents Collective Bargaining Act ordered that the number of employees in the attached Schedule "A" are determined to be essential employees within the meaning of Section 10 of The Interns and Residents Collective Bargaining Act.

SCHEDULE "A"

Classifications	# of Essential Employees
Interns	7
Resident I	5
Resident II	12
Resident III	4
Resident IV	4
Resident V	1

2. Salvation Army Grace General Hospital and The Professional Association of Interns and Residents of Newfoundland.

Decision

Whereas the employer has supplied to the Labour Relations Board a statement in writing of the number of employees in each classification in the unit represented by the bargaining agent who are considered by the employer to be essential employees and the bargaining agent has consented in writing to the application, therefore, the Board, pursuant to Section 10(2) of The Interns and Residents Collective Bargaining Act, ordered that the number of employees in the attached Schedule "A" are determined to be essential employees within the meaning of Section 10 of The Interns and Residents Collective Bargaining Act.

SCHEDULE "A"

Classifications	# of Essential Employees
Interns	3
Resident I	1
Resident II	0
Resident III	3
Resident IV	1
Resident V	1

3. St. Clare's Mercy Hospital and The Professional Association of Interns and Residents of Newfoundland.

Decision

Whereas the employer has supplied to the Labour Relations Board a statement in writing of the number of employees in each classification in the unit represented by the bargaining agent who are considered by the employer to be essential employees and the bargaining agent has consented in writing to the application, therefore, the Board, pursuant to Section 10(2) of The Interns and Residents Collective Bargaining Act, ordered that the number of employees in the attached Schedule "A" are determined to be essential employees within the meaning of Section 10 of The Interns and Residents Collective Bargaining Act.

SCHEDULE "A"

Classifications	# of Essential Employees
Interns	3
Resident I	1
Resident II	3
Resident III	1
Resident IV	2
Resident V	0

4. Children's Hospital Corporation and The Professional Association of Interns and Residents of Newfoundland

Decision

Whereas the employer has supplied to the Labour Relations Board a statement in writing of the number of employees in each classification in the unit represented by the bargaining agent who are considered by the employer to be essential employees and the bargaining agent has consented in writing to the application, therefore, the Board, pursuant to Section 10(2) of The Interns and Residents Collective Bargaining Act, ordered that the number of employees in the attached Schedule "A" are determined to be essential employees within the meaning of Section 10 of The Interns and Residents Collective Bargaining Act.

SCHEDULE "A"

Classifications	# of Essential Employees
Interns	5
Resident I	0
Resident II	4
Resident III	1
Resident IV	5
Resident V (Fellow)	1

5. Grenfell Regional Health Services and The Professional Association of Interns and Residents of Newfoundland

Decision

Whereas the employer has supplied to the Labour Relations Board a statement in writing of the number of employees in each classification in the unit represented by the bargaining who are considered by the employer to be essential employees and the bargaining agent has consented in writing to the application, therefore, the Board, pursuant to Section 10(2) of The Interns and Residents Collective Bargaining Act ordered that the number of employees in the attached Schedule "A" are determined to be essential employees within the meaning of Section 10 of The Interns and Residents of Collective Bargaining Act.

SCHEDULE "A"

Classifications	# of Essential Employees
Interns	0
Resident I	1